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COMPILATION

OF THE

SOCIAL SECURITY LAWS

INCLUDING THE SOCIAL SECURITY ACT,
AS AMENDED, AND RELATED ENACTMENTS
THROUGH JANUARY 1, 1989

VOLUME II

COMPILED BY
THE SOCIAL SECURITY ADMINISTRATION
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PREFACE

The Social Security Act

The original Social Security Act is P.L. 74-271 (49 Stat. 620), approved August 14, 1935. The Social Security Act has been amended, in part, a number of times. A list of the laws amending the Social Security Act is in Appendix I, Volume II, p. 959.

Administration of the Social Security Act

The Social Security Board was responsible for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of Title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of Title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now see Rehabilitation Act of 1973); and Title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were thenceforth to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946 [see Vol. II, p. 132.] transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under Title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment compensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reorganization Plan No. 2 of 1949 [see Vol. II, p. 134.].

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 [see Vol. II, p. 135.] with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by P.L. 96-88, §509, approved October 17, 1979. That public law did not amend references to the Secretary in the Social Security Act. The Department of Health and Human Services redesignation was effective May 4, 1980 (45 Federal Register 29642; May 5, 1980). The Department of Education which was established by P.L. 96-88 was activated May 4, 1980 (Executive Order 12212 of May 2, 1980; 45 Federal Register 29557; May 5, 1980).

This Compilation of the Social Security Laws

This compilation is current through January 1, 1989. This compilation contains:

Volume I

(1) Table of Contents;
(2) The Social Security Act, as in effect January 1, 1989;
(3) Internal Revenue Code—Selected Provisions; and
(4) Index to the Social Security Act.

Volume II

(1) Table of Contents;
(2) Other provisions of the Internal Revenue Code, provisions of public laws and statutes which are cited in the Social Security Act, and provisions of public laws which affect administration of the Social Security Act but do not amend it;
(3) Appendixes containing other helpful information; and
(4) Totalization Agreements.

Volume III

Provisions of the Social Security Act which have been superseded.

Effect of Compilation

This Compilation of the Social Security Laws is not prima facie evidence of the provisions of the Social Security Act or other laws or statutes which are included. This compilation has been prepared solely for convenient reference purposes.

Cautions

Although they are not a part of the text of the law, citations have been included which will enable the reader to locate the same material in the United States Code (U.S.C.). These matching citations to the United States Code are shown within brackets after the public law section, as, for example:

[Social Security Act]	Sec. 201. [42 U.S.C. 401]
[Public Law 99-509]	Sec. 9342. [42 U.S.C. 1395b-1 note].

Thus, both sections may be found in Title 42 of the United States Code, the first at section 401 and the second in the notes following section 1395b-1. "[None assigned]" means the provision is not in the United States Code, but can be found in the public law.

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[2]Enactment date.

[3]P.L. 99-514, §2, provides, in part, that the Internal Revenue Title enacted August 16, 1954, may be cited as the "Internal Revenue Code of 1986".

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Title 21

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§310.6 Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products.

(a) The Food and Drug Administration's conclusions on the effectiveness of drugs are currently being published in the FEDERAL REGISTER as Drug Efficacy Study Implementation (DESI) Notices and as Notices of Opportunity for Hearing. The specific products listed in these notices include only those that were introduced into the market through the new drug procedures from 1938-62 and were submitted for review by the National Academy of Sciences-National Research Council (NAS-NRC), Drug Efficacy Study Group. Many products which are identical to, related to, or similar to the products listed in these notices have been marketed under different names or by different firms during this same period or since 1962 without going through the new drug procedures or the Academy review. Even though these products are not listed in the notices, they are covered by the new drug applications reviewed and thus are subject to these notices. All persons with an interest in a product that is identical, related, or similar to a drug listed in a drug efficacy notice or a notice of opportunity for a hearing will be given the same opportunity as the applicant to submit data and information, to request a hearing, and to participate in any hearing. It is not feasible for the Food and Drug Administration to list all products which are covered by an NDA and thus subject to each notice. However, it is essential that the findings and conclusions that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective be applied to all identical, related, and similar drug products to which they are reasonably applicable. Any product not in compliance with an applicable drug efficacy notice is in violation of section 505 (new drugs) and/or section 502 (misbranding) of the act.

(b)(1) An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties.

(2) Where experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs would conclude that the findings and conclusions, stated in a drug efficacy notice or notice of opportunity for hearing, that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective are applicable to an identical, related, or similar drug product, such product is affected by the notice. A combination drug product containing a drug that is identical, related, or similar to a drug named in a notice may also be subject to the findings and conclusions in a notice that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective.

(3) Any person may request an opinion on the applicability of such a notice to a specific product by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(c) Manufacturers and distributors of drugs should review their products as drug efficacy notices are published and assure that identical, related, or similar products comply with all applicable provisions of the notices.

(d) The published notices and summary lists of the conclusions are of particular interest to drug purchasing agents. These agents should take particular care to assure that the same purchasing policy applies to drug products that are identical, related, or similar to those named in the drug efficacy notices. The Food and Drug Administration applies the same regulatory policy to all such products. In many instances a determination can readily be made as to the applicability of a drug efficacy notice by an individual who is knowledgeable about drugs and their indications for use. Where the relationships are more subtle and not readily recognized, the purchasing agent may request an opinion by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(e) Interested parties may submit to the Food and Drug Administration, Center for Drugs and Biologics, Office of Compliance, HFN-300, 5600 Fishers Lane, Rockville, MD 20857, the names of drug products, and of their manufacturers or distributors, that should be the subject of the same purchasing and regulatory policies as those reviewed by the Drug Efficacy Study Group. Appropriate action, including referral to purchasing officials of various government agencies, will be taken.

(f) This regulation does not apply to OTC drugs identical, similar, or related to a drug in the Drug Efficacy Study unless there has been or is notification in the FEDERAL REGISTER that a drug will not be subject to an OTC panel review pursuant to §§330.10, 330.11, and 330.5 of this chapter.

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[*Internal Reference.*—Social Security Act §§1861(t) and 1862(c) cite §310.6 of title 21 of the Code of Federal Regulations.]

Title 42

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§405.454 Payments to providers.[1]

* * * * * * *

(j) *Periodic interim payment method of reimbursement.*—

(1)(i) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(ii) *Covered services furnished on or after July 1, 1987.* Effective with covered services furnished to beneficiaries on or after July 1, 1987, the PIP method, in addition to the other methods of interim payment on individual provider billings for covered services, is available only for the following:

(A) Part A SNF services.

(B) Part A and Part B HHA services.

(C) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90-248 (42 U.S.C. 1395b-1) or section 222(a) of Pub. L. 92-603 (42 U.S.C. 1395b-1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.

(D) Part A services furnished in hospitals located in a rural area as defined in §412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns.

(2) Any participating provider furnishing the services described in paragraph (j)(1) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of an HHA, either its estimated—

(A) *Total Medicare reimbursement* for Part A and Part B services is at least $25,000 a year computed under the PIP formula; or

(B) Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable cost.

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the Medicare program).

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis.

(iv) The provider has repaid or agrees to repay any outstanding current financing payment in full, such payment to be made before the effective date of its requested conversion from a regular interim payment method to the PIP method.

(3) No conversion to the PIP method may be made with respect to any provider until after that provider has repaid in full its outstanding current financing payment.

(4) The intermediary's approval of a provider's request for reimbursement under the PIP method will be conditioned upon the intermediary's best judgment as to whether payment can be made to the provider under the PIP method without undue risk of its resulting in an overpayment because of greatly varying or substantially declining

[1]As in effect October 1, 1986.

Medicare utilization, inadequate billing practices, or other circumstances. The intermediary may terminate PIP reimbursement to a provider at any time it determines that the provider no longer meets the qualifying requirements or that the provider's experience under the PIP method shows that proper payment cannot be made under this method.

(5) Payment will be made biweekly under the PIP method unless the provider requests a longer fixed interval (not to exceed 1 month) between payments. The payment amount will be computed by the intermediary to approximate, on the average, the cost of covered inpatient or home health services rendered by the provider during the period for which the payment is to be made, and each payment will be made 2 weeks after the end of such period of services. Upon request, the intermediary will, if feasible, compute the provider's payments to recognize significant seasonal variation in Medicare utilization of services on a quarterly basis starting with the beginning of the provider's reporting year.

(6) A provider's periodic interim payment amount may be appropriately adjusted at any time if the provider presents or the intermediary otherwise obtains evidence relating to the provider's costs or Medicare utilization that warrants such adjustment. In addition, the intermediary will recompute the payment immediately upon completion of the desk review of a provider's cost report and also at regular intervals not less often than quarterly. The intermediary may make a retroactive lump sum interim payment to a provider, based upon an increase in its periodic interim payment amount, in order to bring past interim payments for the provider's current cost reporting period into line with the adjusted payment amount. The objective of intermediary monitoring of provider costs and utilization is to assure payments approximating, as closely as possible, the reimbursement to be determined at settlement for the cost reporting period. A significant factor in evaluating the amount of the payment in terms of the realization of the projected Medicare utilization of services is the timely submittal to the intermediary of completed admission and billing forms. All providers must complete billings in detail under this method as under regular interim payment procedures.

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[*Internal Reference.*—Social Security Act §1815(e)(2) cites §405.454(j) of title 42, Code of Federal Regulations.]

Rules of Civil Procedure

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Rule 4. [28 U.S.C. Appendix] Process

(a) SUMMONS: ISSUANCE. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) SAME: FORM. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(c) SERVICE.

(1) Process, other than a subpoena or a summons and complaint, shall be served by a United States marshal or deputy United States marshal, or by a person specially appointed for that purpose.

(2)(A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.

(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only—

(i) on behalf of a party authorized to proceed in forma pauperis pursuant to Title 28, U.S.C. §1915, or of a seaman authorized to proceed under Title 28, U.S.C. §1916,

(ii) on behalf of the United States or an officer or agency of the United States, or

(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(E) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(3) The court shall freely make special appointments to serve summonses and complaints under paragraph (2)(E) of this subdivision of this rule and all other process under paragraph (1) of this subdivision of this rule.

(d) SUMMONS AND COMPLAINT: PERSON TO BE SERVED. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(e) SUMMONS: SERVICE UPON PARTY NOT INHABITANT OF OR FOUND WITHIN STATE. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Rule 19, may be served in the manner stated in paragraphs (1)-(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

(g) RETURN. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(h) AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) ALTERNATIVE PROVISIONS FOR SERVICE IN A FOREIGN COUNTRY.

(1) *Manner.* When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) SUMMONS: TIME LIMIT FOR SERVICE. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

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[*Internal Reference.*—Social Security Act § 1128A(c) cites Rule 4 of the Federal Rules of Civil Procedure.]

TITLE 3, UNITED STATES CODE

THE PRESIDENT

* * * * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

* * * * * * *

§105. Assistance and services for the President

(a)(1) Subject to the provisons[1] of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 25 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 50 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5.

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§106. Assistance and services for the Vice President

(a) In order to enable the Vice President to provide assistance to the President in connection with the performance of functions specially assigned to the Vice President by the President in the discharge of executive duties and responsibilities, the Vice President is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 5 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 3 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 3 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

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§107. Domestic Policy Staff and Office of Administration; personnel

(a) In order to enable the Domestic Policy Staff to perform its functions, the President (or his designee) is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 6 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

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[1] As in original. Probably should be "provisions".

(B) 18 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(C) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

* * * * * * *

(b)(1) In order to enable the Office of Administration to perform its functions, the President (or his designee) is authorized—

(A) without regard to such other provisions of law as the President may specify which regulate the employment and compensation of persons in the Government service, to appoint and fix the pay of not more than—

(i) 5 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(ii) 5 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and

* * * * * * *

[*Internal Reference.*—There are citations to title 3, United States Code, in Social Security Act §210(a).]

TITLE 5, UNITED STATES CODE

GOVERNMENT ORGANIZATION AND EMPLOYEES

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * * * *

Subchapter I—General Provisions

§504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.

(b)(1) For the purposes of this section—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;

(C) "adversary adjudication" means (i) an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a

rate or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), and (iii) any hearing conducted under chapter 38 of title 31;

(D) "adjudicative officer" means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication; and

(E) "position of the agency" means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986.[1]

Subchapter II—Administrative Procedure

§551. Definitions

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

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[1] P.L. 100-647, §6239(b), added subsection (f).

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided,* That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed.[2]]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

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[2]P.L. 98-620, §402(2); 98 Stat. 3357.

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§552a. Records maintained on individuals

(a) Definitions.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;[3]

[3]P.L. 100-503, §5(1), struck out "and".

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;[4]

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;[5]

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;[6]

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;[7]

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;[8]

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the

[4] P.L. 100-503, §5(2), struck out the period and substituted a semicolon.
[5] P.L. 100-503, §5(3), added paragraph (8).
[6] P.L. 100-503, §5(3), added paragraph (9).
[7] P.L. 100-503, §5(3), added paragraph (10).
[8] P.L. 100-503, §5(3), added paragraph (11).

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Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and[9]

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).[10]

(b) Conditions of Disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensi-

[9] P.L. 100-503, §5(3), added paragraph (12).
[10] P.L. 100-503, §5(3), added paragraph (13).

ble to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;[11]

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and[12]

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.[13]

(f) Agency Rules.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially[14] compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies.—Whenever any agency

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[11]P.L. 100-503, §3(a)(1), struck out "and".
[12]P.L. 100-503, §3(a)(2), struck out the period and substituted "; and".
[13]P.L. 100-503, §3(a)(3), added paragraph (12).
[14]P.L. 100-503, §7, struck out "annually" and substituted "biennially".

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) Archival Records.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained

by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) Government Contractors.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.[15]

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information. Such independent verification may be satisfied by verification in accordance with (A) the requirements of paragraph (2); and (B) any additional requirements governing verification under such Federal benefit program.

(2) Independent verification referred to in paragraph (1) requires independent investigation and confirmation of any information used as a basis for an adverse action against an individual including, where applicable—

(A) the amount of the asset or income involved,

(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

(C) the period or periods when the individual actually had such asset or income.

(3) No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, (A) unless such individual has received notice from such agency containing a statement of its findings and informing the individual of the opportunity to contest such findings, and (B) until the subsequent expiration of any notice period provided by the program's law or regulations, or 30 days, whichever is later. Such opportunity to contest may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program. The exercise of any such rights shall not affect any rights available under this section.

(4) Notwithstanding paragraph (3), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during the notice period required by such paragraph.[16]

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.[17]

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching

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[15] P.L. 100-503, §2(2), added this subsection (o).
[16] P.L. 100-503, §2(2), added this subsection (p).
[17] P.L. 100-503, §2(2), added this subsection (q).

program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.[18]

(s)[19] BIENNIAL[20] REPORT.—The President shall biennially[21] submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years[22];

(2) describing the exercise of individual rights of access and amendment under this section during such years[23];

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)[24](1) Effect of Other Laws.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

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[18] P.L. 100-503, §2(1), redesignated subsection (o) as subsection (r).
P.L. 100-503, §3(b), amended the redesignated subsection (r) in its entirety.
[19] P.L. 100-503, §2(1), redesignated subsection (p) as subsection (s).
[20] P.L. 100-503, §8(1), struck out "ANNUAL" and substituted "BIENNIAL".
[21] P.L. 100-503, §8(2), struck out "annually" and substituted "biennially".
[22] P.L. 100-503, §8(3), struck out "year" and substituted "2 years".
[23] P.L. 100-503, §8(4), struck out "year" and substituted "years".
[24] P.L. 100-503, §2(1), redesignated subsection (q) as subsection (t).

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.[25]

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.[26]

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§553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

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[25] P.L. 100-503, §4, added subsection (u).
[26] P.L. 100-503, §6(a), added subsection (v).

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[27] administrative law judge appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

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[27] As in original; should be "an".

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

§556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of

personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.
The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

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§559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

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CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

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§603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall

prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

§604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a succinct statement of the need for, and the objectives of, the rule;

(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

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CHAPTER 7—JUDICIAL REVIEW

§701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

§702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsiderations, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter I—Examination, Certification, and Appointment

§3301. Civil service; generally

The President may—

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

§3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, 7203, 7321, and 7322 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

§3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

§3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

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Subchapter III—Details

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§3343. Details; to international organizations

(a) For the purpose of this section—

(1) "agency", "employee", and "international organization" have the meanings given them by section 3581 of this title; and

(2) "detail" means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

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Subchapter VI—Assignments to and From States

§3371. Definitions

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(m)[28] of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management.

§3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

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[28]P.L. 93-638, §104(a) [as redesignated and amended by P.L. 100-472, §203(a) and (b)], struck out "4(c)" and substituted "4(m)".

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years.

In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee.[29] That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.[30]

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54 of this title, on the same basis as other Federal employees.[31]

§3373. Assignment of employees to State and local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

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[29]P.L. 93-638, §104(k) [as added by P.L. 100-472, §203(f)], added this sentence.
[30]See footnote 29.
[31]P.L. 93-638, §104(l) [as added by P.L. 100-472, §203(f)], added subsection (d).

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

§3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

§3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

§3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

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CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER I—RETENTION PREFERENCE

§3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) "active service" has the meaning given it by section 101 of title 37;

(2) "a retired member of a uniformed service" means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including period of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service[32].

§3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

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[32]P.L. 100-325, §2(e), inserted "or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service".

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

§3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

§3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

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SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§3581. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department; and

(C) an employing authority in the legislative branch;

(2) "employee" means an employee in or under an agency;

(3) "international organization" means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) "transfer" means the change of position by an employee from an agency to an international organization; and

(5) "reemployment" means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

§3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization, or other benefit of any kind on account of the same injury or death, the amount thereof, is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other

monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which—

(1) an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or

(2) a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee's period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee.

§3583. Computations

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer.

§3584. Regulations

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICES

§3591. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of this title.

§3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393(d) of this title, or

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

§3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.

§3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

§3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

(d) For purposes of this section, "reduction in force" includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.

§3595a. Furlough in the Senior Executive Service

(a) For the purposes of this section, "furlough" means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

§3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§3597. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

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CHAPTER 51—CLASSIFICATION

§5101. Purpose

It is the purpose of this chapter to provide a plan for classification of positions whereby—

(1) in determining the rate of basic pay which an employee will receive—

(A) the principle of equal pay for substantially equal work will be followed; and

(B) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service; and

(2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined by section 5102 of this title, and the various classes will be so described in published standards, as provided by section 5105 of this title, that the resulting position-classification system can be used in all phases of personnel administration.

§5102. Definitions; application

(a) For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency;

(B) the Administrative Office of the United States Courts;

(C) the Library of Congress;

(D) the Botanic Garden;

(E) the Government Printing Office;

(F) the Office of the Architect of the Capitol; and

(G) the government of the District of Columbia;

but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Virgin Islands Corporation;

(iv) the Atomic Energy Commission;

(v) the Central Intelligence Agency;

(vi) the Panama Canal Commission;

(vii) the National Security Agency, Department of Defense;

(viii) the General Accounting Office; or

(x)[33] the Defense Intelligence Agency, Department of Defense;

(2) "employee" means an individual employed in or under an agency;

(3) "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions" includes all positions which are sufficiently similar, as to—

(A) kind or subject-matter of work;

(B) level of difficulty and responsibility; and

(C) the qualification requirements of the work;

to warrant similar treatment in personnel and pay administration; and

(5) "grade" includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—

(A) level of difficulty and responsibility; and

(B) level of qualification requirements of the work;

to warrant their inclusion within one range of rates of basic pay in the General Schedule.

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[33]As in original. No clause (ix).

(b) Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency, including positions in local boards and appeal boards within the Selective Service System and employees occupying those positions.

(c) This chapter does not apply to—

[(1) Repealed.[34]]

(2) members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980; and positions in or under the Department of State which are—

(A) connected with the representation of the United States to international organizations; or

(B) specifically exempted by statute from this chapter or other classification or pay statute;

(3) physicians, dentists, nurses, and other employees in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

(4) teachers, school officials, and employees of the Board of Education of the District of Columbia whose pay is fixed under chapter 15 of title 31, District of Columbia Code; the chief judges and the associate judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals; and nonjudicial employees of the District of Columbia court system whose pay is fixed under title 11 of the District of Columbia Code;

(5) members of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, and the Executive Protective Service; and members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title;

(6) lighthouse keepers and civilian employees on lightships and vessels of the Coast Guard whose pay is fixed under section 432(f) and (g) of title 14;

(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, and employees in the Bureau of Engraving and Printing whose duties are to perform or to direct manual or machine operations requiring special skill or experience, or to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations;

(8) officers and members of crews of vessels;

(9) employees of the Government Printing Office whose pay is fixed under section 305 of title 44;

(10) civilian professors, lecturers, and instructors at the Naval War College and the Naval Academy whose pay is fixed under sections 6952 and 7478 of title 10; senior professors, professors, associate and assistant professors, and instructors at the Naval Postgraduate School whose pay is fixed under section 7044 of title 10; and the Academic Dean of the Postgraduate School of the Naval Academy whose pay is fixed under section 7043 of title 10;

(11) aliens or noncitizens of the United States who occupy positions outside the United States;

(12) any Executive agency to the extent of any election under section 1212(b)(2) (relating to the Panama Canal Employment System) of the Panama Canal Act of 1979;

(13) employees who serve without pay or at nominal rates of pay;

(14) employees whose pay is not wholly from appropriated funds of the United States (other than employees of the Federal Retirement Thrift Investment Management System appointed under section 8474(c)(2) of this title), except that with respect to the Veterans' Canteen Service, Veterans' Administration this paragraph applies only to employees necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots whose employment is authorized by section 4202 of title 38;

(15) employees whose pay is fixed under a cooperative agreement between the United States and—

(A) a State or territory or possession of the United States, or political subdivision thereof; or

(B) an individual or organization outside the service of the Government of the United States;

(16) student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, student occupational therapists, and other student employees, assigned or attached to a hospital, clinic, or laboratory

[34] P.L. 91-375, §6(c)(9); 84 Stat. 776.

primarily for training purposes, whose pay is fixed under subchapter V of chapter 53 of this title or section 4114 of title 38;

(17) inmates, patients, or beneficiaries receiving care or treatment or living in Government agencies or institutions;

(18) experts or consultants, when employed temporarily or intermittently in accordance with section 3109 of this title;

(19) emergency or seasonal employees whose employment is of uncertain or purely temporary duration, or who are employed for brief periods at intervals;

(20) employees employed on a fee, contract, or piece work basis;

(21) employees who may lawfully perform their duties concurrently with their private profession, business, or other employment, and whose duties require only a portion of their time, when it is impracticable to ascertain or anticipate the proportion of time devoted to the service of the Government of the United States;

(22) "teachers" and "teaching positions" as defined by section 901 of title 20;

(23) examiners-in-chief and designated examiners-in-chief in the Patent and Trademark Office, Department of Commerce;

(24) temporary positions in the Bureau of the Census established under section 23 of title 13, and enumerator positions in the Bureau of the Census;

(25) positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the maximum rate for GS-18;

(26) civilian members of the faculty of the Coast Guard Academy whose pay is fixed under section 186 of title 14;

(27) members of the police[35] of the Library of Congress whose pay is fixed under section 167 of title 2; or

(28) civilian members of the faculty of the Air Force Institute of Technology whose pay is fixed under section 9314 of title 10.

(d) This chapter does not apply to an employee of the Office of the Architect of the Capitol whose pay is fixed by other statute. Subsection (c) of this section, except paragraph (7), does not apply to the Office of the Architect of the Capitol.

§5103. Determination of applicability

The Office of Personnel Management shall determine finally the applicability of section 5102 of this title to specific positions and employees, except for positions and employees in the Office of the Architect of the Capitol.

§5104. Basis for grading positions

The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this chapter applies. The General Schedule is divided into 18 grades of difficulty and responsibility of work, as follows:

(1) Grade GS-1 includes those classes of positions the duties of which are to perform, under immediate supervision, with little or no latitude for the exercise of independent judgment—

(A) the simplest routine work in office, business, or fiscal operations; or

(B) elementary work of a subordinate technical character in a professional, scientific, or technical field.

(2) Grade GS-2 includes those classes of positions the duties of which are—

(A) to perform, under immediate supervision, with limited latitude for the exercise of independent judgment, routine work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring some training or experience; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(3) Grade GS-3 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, somewhat difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring in either case—

(i) some training or experience;

(ii) working knowledge of a special subject matter; or

(iii) to some extent the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(4) Grade GS-4 includes those classes of positions the duties of which are—

[35] P.L. 100-135, §1(b)(2), struck out "special police force" and substituted "police".

(A) to perform, under immediate or general supervision, moderately difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) a moderate amount of training and minor supervisory or other experience;

(ii) good working knowledge of a special subject matter or a limited field of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(5) Grade GS-5 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special subject matter or of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in a limited field;

(B) to perform, under immediate supervision, and with little opportunity for the exercise of independent judgment, simple and elementary work requiring professional, scientific, or technical training; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(6) Grade GS-6 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(7) Grade GS-7 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, work of considerable difficulty and responsibility along special technical or supervisory lines in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive working knowledge of a special and complex subject matter; procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment;

(B) under immediate or general supervision, to perform somewhat difficult work requiring—

(i) professional, scientific, or technical training; and

(ii) to a limited extent, the exercise of independent technical judgment; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(8) Grade GS-8 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical or supervisory lines in office, business, or fiscal administration, requiring—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive and thorough working knowledge of a specialized and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(9) Grade GS-9 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized training and considerable specialized, supervisory, or administrative experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a special and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment;

(B) with considerable latitude for the exercise of independent judgment, to perform moderately difficult and responsible work, requiring—

(i) professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing; and

(ii) considerable additional professional, scientific, or technical training or experience which has demonstrated capacity for sound independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(10) Grade GS-10 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, highly difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized, supervisory, or administrative training and experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a specialized and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(11) Grade GS-11 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision and with wide latitude for the exercise of independent judgment, work of marked difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated important attainments and marked capacity for sound independent action or decision; and

(ii) intimate grasp of a specialized and complex subject matter, or of the profession, art, or science involved, or of administrative work of marked difficulty;

(B) with wide latitude for the exercise of independent judgment, to perform responsible work of considerable difficulty requiring somewhat extended professional, scientific, or technical training and experience which has demonstrated important attainments and marked capacity for independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(12) Grade GS-12 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision, with wide latitude for the exercise of independent judgment, work of a very high order of difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and attainments of a high order in specialized or administrative work; and

(ii) intimate grasp of a specialized and complex subject matter or of the profession, art, or science involved;

(B) under general administrative supervision, and with wide latitude for the exercise of independent judgment, to perform professional, scientific, or technical work of marked difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and attainments of a high order in professional, scientific, or technical research, practice, or administration; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(13) Grade GS-13 includes those classes of positions the duties of which are—

(A) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility along special technical, supervisory, or administrative lines, requiring extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and marked attainments;

(B) to serve as assistant head of a major organization involving work of comparable level within a bureau;

(C) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in professional, scientific, or technical research, practice, or administration; or

(D) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(14) Grade GS-14 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with wide latitude for the exercise of independent judgment, work of exceptional difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and unusual attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute major professional, scientific, technical, administrative, fiscal, or other specialized programs, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(15) Grade GS-15 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(16) Grade GS-16 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with unusual latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, and other specialized programs of unusual difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated leadership and exceptional attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(17) Grade GS-17 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is of a high order among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, or other specialized programs of exceptional difficulty, responsibility, and national significance, requiring extended training and experience which demonstrated exceptional leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

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(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(18) Grade GS-18 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is exceptional and outstanding among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute frontier or unprecedented professional, scientific, technical, administrative, fiscal, or other specialized programs of outstanding difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated outstanding leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

§5105. Standards for classification of positions

(a) The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information for and cooperate in the preparation of the standards. In the standards, which shall be published in such form as the Office may determine, the Office shall—

(1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements;

(2) establish the official class titles; and

(3) set forth the grades in which the classes have been placed by the Office.

(b) The Office, after consulting the agencies to the extent considered necessary, shall revise, supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time will be covered by current published standards.

(c) The official class titles established under subsection (a)(2) of this section shall be used for personnel, budget, and fiscal purposes. However, this requirement does not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

§5106. Basis for classifying positions

(a) Each position shall be placed in its appropriate class. The basis for determining the appropriate class is the duties and responsibilities of the position and the qualifications required by the duties and responsibilities.

(b) Each class shall be placed in its appropriate grade. The basis for determining the appropriate grade is the level of difficulty, responsibility, and qualification requirements of the work of the class.

(c) Appropriated funds may not be used to pay an employee who places a supervisory position in a class and grade solely on the basis of the size of the organization unit or the number of subordinates supervised. These factors may be given effect only to the extent warranted by the work load of the organization unit and then only in combination with other factors, such as the kind, difficulty, and complexity of work supervised, the degree and scope of responsibility delegated to the supervisor, and the kind, degree, and character of the supervision exercised.

§5107. Classification of positions

Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management or, if no published standards apply directly, consistently with published standards. When facts warrant, an agency may change a position which it has placed in a class or grade under this section from that class or grade to another class or grade. Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.

§5108. Classification of positions at GS-16, 17, and 18

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in—

(i) GS-16, 17, and 18;[36]

(ii) the Senior Executive Service, in accordance with section 3133 of this title; and[37]

(iii) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.[38]

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service[39].

(b)(1) The number of positions of senior specialists in the Legislative Reference Service, Library of Congress, placed in GS-16, 17, and 18 under the proviso in section 166(b)(1) of title 2 are in addition to the number of positions authorized by subsection (a) of this section.

(2) In addition to the number of positions authorized by subsection (a) of this section and positions referred to in paragraph (1) of this subsection, the Librarian of Congress, subject to the procedures prescribed by this section, may place a total of 44 positions in the Library of Congress in GS-16, 17, and 18.

(c) In addition to the number of positions authorized by subsection (a) of this section—

(1) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 17[40] positions in GS-16, 17, and 18; and

(2) the Chief Judge of the United States Tax Court, without regard to this chapter (except section 5114), may place a total of 5 positions in GS-16, 17, and 18; and

(3) the heads of executive departments or agencies in which boards of contract appeals are established pursuant to the Contract Disputes Act of 1978, and subject to the standards and procedures prescribed by this chapter, but without regard to subsection (d) of this section, may place additional positions, not to exceed seventy in number, in GS-16, GS-17, and GS-18 for the independent quasi-judicial determination of contract disputes, with the allocation of such positions among such executive departments and agencies determined by the Administrator for Federal Procurement Policy on the basis of relative case load.

§5109. Positions classified by statute

(a) The position held by an employee of the Department of Agriculture while he, under section 450d of title 7, is designated and vested with a delegated regulatory function or part thereof shall be classified in accordance with this chapter, but not lower than GS-14.

(b) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title.

§5110. Review of classification of positions

(a) The Office of Personnel Management, from time to time, shall review such number of positions in each agency as will enable the Office to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards.

(b) When the Office finds under subsection (a) of this section that a position is not placed in its proper class and grade in conformance with published standards or that a position for which there is no published standard is not placed in the class and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate class and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

§5111. Revocation and restoration of authority to classify positions

(a) When the Office of Personnel Management finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency by section 5107 of this title and require that prior approval of the Office be secured before an action placing a position in a class and grade becomes effective for payroll and other personnel purposes. The Office may limit the revocation or suspension to—

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[36] P.L. 100-325, §2(g)(1), struck out "and".
[37] P.L. 100-325, §2(g)(2), struck out the period and substituted "; and".
[38] P.L. 100-325, §2(g)(3), added clause (iii).
[39] P.L. 100-325, §2(g)(4), struck out "GS-16, 17, and 18 in the Federal Bureau of Investigation" and substituted "the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service".
[40] P.L. 100-702, §104(c)(2), struck out "15" and substituted "17".

(1) the departmental or field service, or any part thereof;
(2) a geographic area;
(3) an organization unit or group of organization units;
(4) certain types of classification actions;
(5) classes in particular occupational groups or grades; or
(6) classes for which standards have not been published.

(b) After revocation or suspension, the Office may restore the authority to the extent that it is satisfied that later actions placing positions in classes and grades will be in conformance with or consistent with published standards.

§5112. General authority of the Office of Personnel Management

(a) Notwithstanding section 5107 of this title, the Office of Personnel Management may—

(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;
(2) place in an appropriate class and grade a newly created position or a position coming initially under this chapter;
(3) decide whether a position is in its appropriate class and grade; and
(4) change a position from one class or grade to another class or grade when the facts warrant.

The Office shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(b) An employee affected or an agency may request at any time that the Office exercise the authority granted to it by subsection (a) of this section and the Office shall act on the request.

§5113. Classification records

The Office of Personnel Management may—

(1) prescribe the form in which each agency shall record the duties and responsibilities of positions and the places where these records shall be maintained;
(2) examine these or other pertinent records of the agency; and
(3) interview employees of the agency who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.

[§5114. Repealed.[41]]

§5115. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this chapter, except sections 5109 and 5114.

CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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§5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Secretary of Health and Human Services.

* * * * * * *

§5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Under Secretary of Health and Human Services

* * * * * * *

[41] P.L. 99-386, §110(a); 100 Stat. 822.

§5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Assistant Secretaries of Health and Human Services (5)[42].

* * * * * * *

General Counsel of the Department of Health and Human Services.

* * * * * * *

Commissioner of Social Security, Department of Health and Human Services.

* * * * * * *

Inspector General, Department of Health and Human Services.

* * * * * * *

Administrator of the Health Care Financing Administration.

* * * * * * *

§5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Assistant Secretary of Health and Human Services for Administration.

* * * * * * *

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

* * * * * * *

Director, Indian Health Service, Department of Health and Human Services.[43]

§5317. Presidential authority to place positions at levels IV and V

In addition to the positions listed in sections 5315 and 5316 of this title, the President, from time to time, may place in levels IV and V of the Executive Schedule positions held by not to exceed 34 individuals when he considers that action necessary to reflect changes in organization, management responsibilities, or workload in an Executive agency. Such an action with respect to a position to which appointment is made by the President by and with the advice and consent of the Senate is effective only at the time of a new appointment to the position. Notice of each action taken under this section shall be published in the Federal Register, except when the President determines that the publication would be contrary to the interest of national security. The President may not take action under this section with respect to a position the pay for which is fixed at a specific rate by this subchapter or by statute enacted after August 14, 1964.

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SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

§5331. Definitions; application

(a) For the purpose of this subchapter, "agency", "employee", "position", "class", and "grade" have the meanings given them by section 5102 of this title.

(b) This subchapter applies to employees and positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service[44], to which chapter 51 of this title applies.

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[42]P.L. 100-485, §603(b), struck out "(4)" and substituted "(5)".

[43]P.L. 100-713, §601(d), added "Director, Indian Health Service, Department of Health and Human Services.".

[44]P.L. 100-325, §2(h)(3), inserted "and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service".

§5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54 of this title, is entitled to basic pay in accordance with the General Schedule.

SCHEDULE 1
General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,213	$10,555	$10,894	$11,233	$11,573	$11,773	$12,108	$12,445	$12,461	$12,780
GS-2	11,484	11,757	12,137	12,461	12,601	12,972	13,343	13,714	14,085	14,456
GS-3	12,531	12,949	13,367	13,785	14,203	14,621	15,039	15,457	15,875	16,293
GS-4	14,067	14,536	15,005	15,474	15,943	16,412	16,881	17,350	17,819	18,288
GS-5	15,738	16,263	16,788	17,313	17,838	18,363	18,888	19,413	19,938	20,463
GS-6	17,542	18,127	18,712	19,297	19,882	20,467	21,052	21,637	22,222	22,807
GS-7	19,493	20,143	20,793	21,443	22,093	22,743	23,393	24,043	24,693	25,343
GS-8	21,590	22,310	23,030	23,750	24,470	25,190	25,910	26,630	27,350	28,070
GS-9	23,846	24,641	25,436	26,231	27,026	27,821	28,616	29,411	30,206	31,001
GS-10	26,261	27,136	28,011	28,886	29,761	30,636	31,511	32,386	33,261	34,136
GS-11	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510
GS-12	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
GS-13	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
GS-14	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
GS-15	57,158	59,063	60,968	62,873	64,778	66,683	68,588	70,493	72,398	74,303
GS-16	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*	82,500*	
GS-17	76,990*	79,556*	82,122*	82,500*	83,818*					
GS-18	86,682*									

*The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $75,500.

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title.

§5333. Minimum rate for new appointments; higher rates for supervisors of prevailing rate employees

(a) New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position in GS-11 or above at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(b) Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.

§5334. Rate on change of position or type of appointment; regulations

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

(1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;

(2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;

(3) he is demoted to a position in a lower grade;

(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;

(5) his type of appointment is changed;

(6) his employment status is otherwise changed; or

(7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 106(2) of title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(a)(2) of that title, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred from a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) the maximum rate of the higher grade; or

(2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

(A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

(B) his existing rate of basic pay, if that rate is the higher.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step, or for an employee appointed to a position covered by the performance management and recognition system established under chapter 54 of this title, any dollar amount, of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by 20 percent to determine the yearly rate of pay of the position.

(e) An employee of a county committee established pursuant to section 590h(b) of title 16 may, upon appointment to a position subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.

(f) In the case of an employee covered by the performance management and recognition system established under chapter 54 of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent.

§5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

(1) each 52 calendar weeks of service in pay rates 1, 2, and 3;

(2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or

(3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee, except an administrative law judge appointed under section 3105 of this title, is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of

the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(f) Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title.

§5336. Additional step-increases

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

(b) A step-increase under this section is in addition to those under section 5335 of this title and is not an equivalent increase in pay within the meaning of section 5335(a) of this title.

(c) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

[§5337. Repealed.[45]]

§5338. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

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Subchapter V—Student-Employees

§5351. Definitions

For the purpose of this subchapter—

* * * * * * *

(2) "student-employee" means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

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Subchapter VI—Grade and Pay Retention

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§5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

[45] P.L. 95-454, October 13, 1978; 92 Stat. 1221.

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures,

(3) for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54 of this title, or

(4) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

§5363. Pay retention[46]

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(b) For the purpose of subsection (a) of this section, "allowable former rate of basic pay" means the lower of—

(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(c) The preceding provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

(3) is demoted for personal cause or at the employee's request.

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[46]P.L. 100-47, §1, provides that notwithstanding 5 CFR 536.104(a)(3), Federal employees in the Tucson, Arizona wage area whose pay has been reduced as a result of a wage survey conducted during fiscal year 1986 shall be entitled to pay retention under this section commencing on the date such reduction took effect.

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Subchapter I—Travel and Subsistence Expenses; Mileage Allowances

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§5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

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Chapter 59—Allowances

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Subchapter IV—Miscellaneous Allowances

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§5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $14,000[47] per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $20,000[48] per annum if the Government physician has served as a Government physician for more than twenty-four months.

For the purpose of determining length of service as a Government physician, service as a physician under section 4104 or 4114 of title 38 or active service as a medical officer in the commissioned corps of the Public Health Service under Title II of the Public Health Service Act (42 U.S.C. ch. 6A) shall be deemed service as a Government physician.[49]

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1990, nor shall any agreement cover a period of service extending beyond September 30, 1992.[50]

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total

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[47] P.L. 100-140, §1(a)(1), struck out "$7,000" and substituted "$14,000".
[48] P.L. 100-140, §1(a)(2), struck out "$10,000" and substituted "$20,000".
[49] P.L. 100-140, §1(a)(3), added this sentence.
[50] P.L. 100-140, §1(b), amended this sentence in its entirety.

amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) chapter 54 of this title, relating to the performance management and recognition system;

(D) section 5371 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

(E) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(F) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;

(G) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(H) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or

(I) section 2 of the Act of May 29, 1959 (Public Law 86-36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency; and

(2) "agency" means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

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CHAPTER 61—HOURS OF WORK

Subchapter I—General Provisions

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§6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.
Birthday of Martin Luther King, Jr., the third Monday in January.
Washington's Birthday, the third Monday in February.
Memorial Day, the last Monday in May.
Independence Day, July 4.
Labor Day, the first Monday in September.
Columbus Day, the second Monday in October.
Veterans Day, November 11.
Thanksgiving Day, the fourth Thursday in November.
Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-workday is a legal public holiday for the employee.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

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CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

§8101. Definitions

For the purpose of this subchapter—

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(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

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§8112. Maximum and minimum monthly payments

(a)[51] Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.

(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.[52]

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[51] P.L. 100-566, §5(1), redesignated this section as subsection (a).
[52] P.L. 100-566, §5(2), added subsection (b).

§8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, 50 percent.

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

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§8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are—

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) "performance of duty" means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Secretary of Health, Education, and Welfare[53] when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Secretary of Health, Education, and Welfare shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

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CHAPTER 83—RETIREMENT

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Subchapter III—Civil Service Retirement

§8331. Definitions

For the purpose of this subchapter—

[53] P.L. 96-88, §509, deemed this reference to be to the Secretary of Health and Human Services.

(1) "employee" means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);[54]

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States; and[55]

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph;[56]

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (other than an employee described in clause (x);

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office of Personnel Management under section 8347(h) of this title;

(v) a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;[57]

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title; or[58]

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.[59]

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

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[54] P.L. 100-679, §13(a)(1)(A), struck out "and".
[55] P.L. 100-679, §13(a)(1)(B), inserted "and".
[56] P.L. 100-679, §13(a)(1)(C), added subparagraph (K).
[57] P.L. 100-238, §112(1), struck out "or".
[58] P.L. 100-238, §112(2), struck out the period and substituted "; or".
[59] P.L. 100-238, §112(3), added clause (xii).

(2) "Member" means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title; and

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B), (C), and (D) of this paragraph, retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is $10,000;

(4) "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) "Fund" means the Civil Service Retirement and Disability Fund;

[(6) Repealed.]

(7) "Government" means the Government of the United States, the government of the District of Columbia, and Gallaudet College;

(8) "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) "annuitant" means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) "survivor" means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) "survivor annuitant" means a survivor who files claim for annuity;

(12) "service" means employment creditable under section 8332 of this title;

(13) "military service" means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(14) "Member service" means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics;

(16) "base month" means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) "normal cost" means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and expressed as a level percentage of aggregate basic pay;

(18) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value; and

(B) the cash balance of the Fund on the books of the Treasury; but does not include any amount attributable to—

(i) the Federal Employees' Retirement System; or

(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;[60]

(19) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) "bankruptcy judge" means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;[61]

(23) "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;[62]

(24) "Indian court" means an Indian court as defined by section 201(3) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77); and[63]

(25) "magistrate" or "United States magistrate" means an individual appointed under section 631 of title 28.[64]

§8332. Creditable service

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[60] P.L. 100-238, §123, added "but does not include any amount attributable to—" and clauses (i) and (ii).
[61] P.L. 100-53, §2(a)(1), amended paragraph (22) in its entirety.
[62] P.L. 100-53, §2(a)(2), struck out "and".
[63] P.L. 100-53, §2(a)(3), struck out a period and substituted "; and".
[64] P.L. 100-53, §2(a)(4), added paragraph (25).

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(j)(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his spouse, former spouse or child is based, if the individual, spouse, former spouse, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or by death or resignation.

(2) The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to—

(A) any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title; or

(B) the service of any employee or Member described in section 8332(c)(1)(B) of this title.

(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

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§8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 year of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this title, with respect to his total service.

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§8334. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7 1/2 percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member, a United States magistrate,[65] a judge of the United States Court of Military Appeals,[66] and a bankruptcy judge. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

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§8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c)(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) An employee is entitled to an annuity if the employee—

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(d) An employee who—

(1) is separated from the service in voluntarily, except by removal for cause on charges of misconduct or delinquency; or

(2) while serving in a geographic area designated by the Office of Personnel Management, is separated from the service voluntarily during a period in which the Office determines that—

(A) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

(B) a significant percent of the employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency. Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

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[65] P.L. 100-53, §2(b)(1)(A), struck out "and" and substituted ", a United States magistrate,".
[66] P.L. 100-53, §2(b)(1)(B), inserted a comma.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.[97]

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§8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee if found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a)-(e) or (n).

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§8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) A judge of the United States Court of Military Appeals who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

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[97] P.L. 100-325, §2(l), added paragraph (3).

(d) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

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§8341. Survivor annuities

(a) For the purpose of this section—

(1) "widow" means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) "widower" means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) "dependent", in the case of any child, means that the employee or Member involved was, at the time of the employee or Member's death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) "child" means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

* * * * * * *

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i), (n), and (o) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the

survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)-(f), (i), (n), and (o) of this title as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) remarries before becoming 55 years of age.

(e) * * *

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

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§8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).[**]

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§8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[(f) Repealed.[**]]

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

[**]P.L. 100-238, §105(b), amended this sentence in its entirety.
[**]P.L. 99-251, §305(a); 100 Stat. 26.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(3) As used in this subsection, "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, "State" means a State, the District of Columbia, or any territory or possession of the United States.

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§8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply

and the decision of the Board shall be subject to judicial review under section 7703 of this title.

* * * * * * *

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Administrator of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Secretary of Health and Human Services or the Secretary's designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter I—General Provisions

§8401. Definitions

For the purpose of this chapter—

(1) the term "account" means an account established and maintained under section 8439(a) of this title;

(2) the term "annuitant" means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less that 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) except as provided in subchapter III of this chapter, the term "basic pay" has the meaning given such term by section 8331(3);

(5) the term "Board" means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term "Civil Service Retirement and Disability Fund" or "Fund" means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term "Director" means the Director of the Office of Personnel Management;

(9) the term "dynamic assumptions" means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(10) the term "earnings", when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term "employee" means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), (J), or (K)[70] of section 8331(1) of this title; and

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office;

[70]P.L. 100-679, §13(a)(2), struck out "or (J)" and substituted "(J), or (K)".

whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, except that such term does not include—

(i) any individual referred to in—

(I) clause (i), (v), (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph[71]; or

(III) the undesignated material after the last clause of such paragraph;[72]

(ii) any individual excluded under section 8402(c) of this title; or[73]

(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980;[74]

(12) the term "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

(B) if the former spouse was married to such individual for at least 9 months;

(13) the term "Executive Director" means the Executive Director appointed under section 8474(a);

* * * * * * *

(18) the term "loss", as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.

(19) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);

(C) amounts deposited by an employee, Member, or survivor under section 8411(f); and

(D) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(20) the term "Member" has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System;

(21) the term "net earnings" means the excess of earnings over losses;

(22) the term "net losses" means the excess of losses over earnings;

(23) the term "normal-cost percentage" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(24) the term "Office" means the Office of Personnel Management;

(25) the term "price index" has the same meaning as provided in section 8331(15);

(26) the term "service" means service which is creditable under section 8411;

(27) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

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[71]P.L. 100-238, §103(d)(2), struck out "(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)".

[72]P.L. 100-238, §113(b)(1)(A), struck out "or".

[73]P.L. 100-238, §113(b)(1)(B), inserted "or".

[74]P.L. 100-238, §113(b)(1)(C), added clause (iii).

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—
(I) to the System, or
(II) to contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and
(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term "survivor" means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term "System" means the Federal Employees' Retirement System described in section 8402(a);

* * * * * * *

(31) the term "military service" means honorable active service—
(A) in the armed forces;
(B) in the commissioned corps of the Public Health Service after June 30, 1960; or
(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;
but does not include service in the National Guard except when ordered to active duty in the service of the United States.

§8402. Federal Employees' Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

(b) The provisions of this chapter shall not apply with respect to—
(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or
(2)(A) any employee or Member who has separated from the service after—
(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and
(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or
(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);
except to the extent provided for under subsection (d) of this section or[75] title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

* * * * * * *

(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.[76]

§8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

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[75] P.L. 100-238, §130(1), inserted "subsection (d) of this section or".
[76] P.L. 100-238, §130(2), added subsection (d).

SUBCHAPTER II—BASIC ANNUITY

§8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

§8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); and

(4) a period of service (other than any service under any of the preceding provisions of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

(c)(1) Except as provided in paragraph (2) or (3), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

(B) under chapter 67 of title 10.

(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under section 8422(e)(5)[77] shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest. A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.[78]

(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

§8412. Immediate retirement

(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement offficer or firefighter, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

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[77] P.L. 100-238, §104(b), struck out "subsection (f)(4)" and substituted "section 8422(e)(5)".
[78] P.L. 100-238, §105(a), added this sentence.

(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a air traffic controller, or

(2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

(f) A Member who is separated from the service, except by resignation or expulsion—

(1) after completing 25 years of service, or

(2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

(g)(1) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.

(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.

(h)(1) The applicable minimum retirement age under this subsection is—

(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

§8413. Deferred retirement

(a) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 5 years of service is entitled to an annuity beginning at the age of 62 years.

(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service but before attaining the applicable minimum retirement age under section 8412(h) is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains such minimum retirement age and must precede the date on which the employee or Member becomes 62 years of age.

(2) The election of an annuity under this subsection shall not be effective unless—

(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

§8414. Early retirement

(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined

under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

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§8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

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(f)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(g)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

§8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

§8417. Survivor reduction for a former spouse

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

§8418. Survivor elections; deposit; offsets

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund, before the expiration of the 2-year period involved, an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

§8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management[79], shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management[80], shall be reduced by an appropriate percentage determined under subparagraph (B).

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[79]P.L. 100-238, §131(a)(1), inserted "or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management".

[80]P.L. 100-238, §131(a)(2), inserted "or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management".

(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse; or

(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

(A) another former spouse who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

§8420. Insurable interest reductions

(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Member. Such individual shall be designated by the employee or Member in writing.

(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member, except that the total reduction may not exceed 40 percent.

(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

§8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which an employee or Member may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

§8421. Annuity supplement

(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h).

(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

(A) an amount determined under paragraph (2), multiplied by

(B) a fraction, as described in paragraph (3).

(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

(i) the average total wages of all workers for that year, multiplied by

(ii) a fraction—

(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

(3) The fraction under this paragraph for any annuitant is a fraction—

(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with 1/2 being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term "benefit computation year" has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term "average total wages of all workers", for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term "service" does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

§8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual's excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the "earnings" and the "applicable exempt amount" of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(c) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

§8422. Deductions from pay; contributions for military service

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The applicable percentage under this subsection for any pay period shall be—

(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

(i) 7 percent, minus

(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to rate of tax for old-age, survivors, and disability insurance); and

(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

(i) 7 1/2 percent, minus

(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(e)(1) Each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) January 1, 1987; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.[81]

§8423. Government contributions

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

(A) the product of—

(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

(B) the product of—

(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, multipled by

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[81] P.L. 100-238, §104(a), added paragraph (5).

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

(2) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, firefighters, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Clerk of the House of Representatives, from the contingent fund of the House.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

§8424. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (b), an employee or Member who—

(1)(A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

(b)(1) Payment of the lump-sum credit under subsection (a)—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

(i) the decree expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies—

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

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SUBCHAPTER III—THRIFT SAVINGS PLAN

§8431. Definition

Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term "basic pay", when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (except sections 5308 and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).

§8432. Contributions

(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)(1), an amount not to exceed 10 percent of such individual's basic pay for such period. Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director.

(b)(1)(A) The Executive Director shall prescribe regulations under which employees and Members shall be afforded a reasonable period every 6 months to elect to make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions. An election to make such contributions shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

(2) Under the regulations—

(A) an employee or Member who has not previously been eligible to make an election under this subsection shall not become so eligible until the second period (described in paragraph (1)) beginning after the date of commencing service as an employee or Member;

(B) an employee or Member whose appointment or election to a position or office in the Federal Government follows a previous period of service during which that individual met the requirements of subparagraph (A) shall be eligible to make an election under this subsection notwithstanding any period of separation;

(C) an employee or Member who elects under subparagraph (D) to terminate contributions shall not again become eligible to make an election under this subsection until the second period (described in paragraph (1)) commencing after the election to terminate; and

(D) an election to terminate may be made under this subparagraph at any time other than during a period afforded under paragraph (1).

(3) Notwithstanding paragraph (2)(A), an employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.

(4)(A) Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director.[82] The Executive Director shall prescribe an election period for such purpose which shall commence on April 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the date on which the employee or Member makes that election.

(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such pay period.

(c)(1)(A) At the time prescribed by the Executive Director, but no later than 12 days after the[83] end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay

[82] P.L. 100-20, §1(b), amended this sentence in its entirety.
[83] P.L. 100-238, §121(a)(1), inserted "time prescribed by the Executive Director, but no later than 12 days after the".

period)[84], the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

(C) If an employee or Member—

(i) is an employee or Member on January 1, 1987;

(ii) separates from Government employment before April 1, 1987; and

(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation.

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made within such time as the Executive Director may prescribe, but no later than 12 days after the end of each[85] such pay period.

(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4) and before July 1, 1987, shall be the amount equal to the sum of—

(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in subparagraph (B) the amount determined under subparagraph (C).

(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

(i) is an employee or Member on January 1, 1987;

(ii) has creditable service described in section 8411(b)(2) of this title; and

(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

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[84]P.L. 100-238, §121(a)(2), struck out "at the end of each succeeding pay period" and substituted "within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period)".

[85]P.L. 100-238, §121(b), struck out "at the end of" and substituted "within such time as the Executive Director may prescribe, but no later than 12 days after the end of each".

(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1954. However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.[86]

(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appropriation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Comptroller General of the United States may, in consultation with the Executive Director, prescribe in regulations.

(g)(1) Except as otherwise provided in this subsection[87], all contributions made under this section shall be fully nonforfeitable when made.

(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position; or

(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation.

(3) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.[88]

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

§8433. Benefits and election of benefits

(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee's or Member's account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate annuity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—

(1) to receive an immediate annuity from the Thrift Savings Fund;

(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age;

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[86] P.L. 100-238, §114, added this sentence.

[87] P.L. 100-238, §115(1), struck out "provided in paragraphs (2) and (3)" and substituted "otherwise provided in this subsection".

[88] P.L. 100-238, §115(2), added paragraph (4).

(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age; or

(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(c) Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to a deferred annuity under subchapter II of this chapter is entitled and may elect—

(1) to receive an immediate annuity from the Thrift Savings Fund;

(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age;

(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence during any period which (A) commences on or after the date on which payment of the employee's or Member's annuity under subchapter II of this chapter commences, and (B) ends not later than April 1 of the year following the year in which the employee or Member becomes 70 1/2 years of age; or

(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(d) Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e).

(e)(1) The Executive Director shall make each transfer elected under subsection (b)(4) or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(f)(1) Subject to paragraph (3)(A) and subsections (a) and (d) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

(2) Subject to paragraph (3)(B) and section 8435(d) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) or (c)(2) may modify the date specified in such election or in a previous modification under this paragraph.

(3)(A) A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity elected by the former employee or Member commences.

(B) A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.

(g) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(d)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

(h) Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

(1) the employee, Member, former employee, or former Member becomes 65 years of age;

(2) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

(3) the employee, Member, former employee, or former Member separates from Government employment.

(i)(1) At any time after December 31, 1987, and before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or

Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

(2) An application under this subsection may be approved only for—

(A) the purchase of a primary residence;

(B) educational expenses;

(C) medical expenses; or

(D) financial hardship.

(3) Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection.[89]

(4) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1954.

(5) A loan may not be made under this subsection unless the requirements of section 8435(f) of this title are satisfied.

§8434. Annuities: methods of payments; election; purchase

(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

(C) a method described in subparagraph (A) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year;[90]

(D) a method described in subparagraph (B) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year; and[91]

(E) a method which provides for the payment of a monthly annuity—

(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse of the annuitant, or (II) has an insurable interest in the annuitant; and

(ii) to the one of them who survives the other of them for the life of the survivor.

(b) Subject to section 8435(c) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which the annuity commences, one of the methods of payment prescribed under subsection (a).

(c) Notwithstanding an elimination of a method of payment by the Board—

(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.

(d)(1) At the time an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity

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[89] P.L. 100-238, §132, amended paragraph (3) in its entirety. Alignment as in original.
[90] P.L. 100-238, §129, amended this subparagraph in its entirety. Alignment as in original.
[91] See footnote 90.

shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof of financial responsibility sufficient to protect the annuitant.

§8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) may make an election under subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2) of such section only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (c).

(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former employee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.

(c)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse a survivor annuity most closely approximating the annuity of a surviving spouse under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married on the date on which the employee's, Member's, former employee's, or former Member's annuity commences under this subchapter.

(2) Paragraph (1) shall not apply—

(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title if—

(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

(i) having provided notification to the spouse of intent to waive; or

(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.

(d)(1) An election, change of election, or modification of the commencement date of a deferred annuity shall not be effective under this subchapter and a transfer may not be made under section 8433(d) of this title to the extent that the election, change, modification, or transfer conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Member (or

former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which the annuity commences,

in accordance with the election, change, modification, or contribution referred to in paragraph (1).

(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

(e)(1) Subject to paragraphs (2) through (7), a former spouse of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

(A) an election under section 8434(a)(2)(E) of this title, or

(B) any court decree, order, or agreement (described in subsection (d)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse of a deceased employee, Member, former employee, or former Member under this section may not exceed the excess, if any, of—

(A) the amount of the survivor annuity determined for a surviving spouse of the deceased employee, Member, former employee, or former Member under the method described in subsection (c)(1), over

(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

(4) If more than one former spouse of a deceased employee, Member, former employee, or former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse to a survivor annuity under this subsection.

(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (c)(2).

(7) Any payment under this subsection to any individual bars recovery by any other individual.

(f)(1)(A) A loan may be made to a married employee or Member under section 8433(i) of this title only if the employee's or Member's spouse consents to such loan in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan and in accordance with regulations prescribed by the Executive Director)—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) An application for a loan under section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1).

(g) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

§8436. Administrative provisions

(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

§8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(i) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund[93].

(e)(1) Subject to subsection (d) and[94] paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659). For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).[95]

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

§8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

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[93] P.L. 100-238, §117(a)(1), struck out "attributable to sums contributed to such Fund under section 8432(c) of this title".

[94] P.L. 100-238, §117(a)(2), inserted "subsection (d) and".

[95] P.L. 100-238, §116, added this sentence.

(1) the term "Common Stock Index Investment Fund" means the Common Stock Index Investment Fund established under subsection (b)(1)(C);
(2) the term "equity capital" means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;
(3) the term "Fixed Income Investment Fund" means the Fixed Income Investment Fund established under subsection (b)(1)(B);
(4) the term "Government Securities Investment Fund" means the Government Securities Investment Fund established under subsection (b)(1)(A);
(5) the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;
(6) the term "plan" means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));
(7) the term "qualified professional asset manager" means—
(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—
(i) has the power to manage, acquire, or dispose of assets of a plan; and
(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;
(B) a savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, which—
(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and
(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of $1,000,000;
(C) an insurance company which—
(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;
(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and
(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or
(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and—
(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or
(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—
(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;
(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or
(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000; and
(8) the term "shareholder's or partner's equity", as used in paragraph (7)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (7)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section.

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (f);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; and

(C) a Common Stock Index Investment Fund as provided in paragraph (2).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(c)(1) Subject to subsection (e), the Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account and not subject to subsection (e) are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1)(A) During each year specified under column 1 of table I set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column 1 of table I is the percentage which corresponds to such year under column 2 of table I.

(C) The amount to be invested as provided in subparagraph (A) in any year specified under column 1 of table I is the total amount contributed to the Thrift Savings Fund by an employee, Member, former employee, or former Member under section 8432(a) of this title and available for investment during such year.

(D) Table I is as follows:

TABLE I

Column 1 Year:	Column 2 Minimum percentage:
1987	100
1988	80
1989	60
1990	40
1991	20.

(2)(A) During each year specified under column 1 of table II set out in subparagraph (D), the Executive Director shall invest, with respect to each employee, Member, former employee, and former Member not less than the percentage determined under subparagraph (B) of the amount described in subparagraph (C) in the Government Securities Investment Fund.

(B) For the purposes of subparagraph (A), the minimum percentage applicable to investments during a year specified under column 1 of table II is the percentage which corresponds to such year under column 2 of table II.

(C) The amount to be invested as provided in subparagraph (A) in any year specified under column 1 of table II is the total amount contributed to the Thrift Savings Fund for the benefit of an employee, Member, former employee, or former Member under section 8432(c) of this title and available for investment during such year.

(D) Table II is as follows:

TABLE II

Column 1 Year:	Column 2 Minimum percentage:
1987-1992	100
1993	80
1994	60
1995	40
1996	20.

(3)(A) Before 1992, the sums invested in the Government Securities Investment Fund as required by paragraph (1)** may not be reinvested in any investment fund other than the Government Securities Investment Fund.

(B) Before 1997, the sums invested in the Government Securities Investment Fund as required by paragraph (2) and the earnings attributable to the investment of such sums may not be reinvested in any investment fund other than the Government Securities Investment Fund.

(f)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(g) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(h)(1) Notwithstanding subsection (f) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (f) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (f)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if—

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

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**P.L. 100-366, §2(a), struck out "and the earnings attributable to the investment of such sums".

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (i) of this section—

(A) the term "public debt limit" means the limitation imposed by section 3101(b) of title 31; and

(B) the term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit."[96]

(i)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (h) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director and the Comptroller General of the United States.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (f) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing."[97]

§8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual for whom contributions are made under section 8432(c)(1) of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.

(2) The balance in an individual's account at any time is the excess of—

(A) the sum of—

(i) all contributions made to the Thrift Savings Fund by the individual under section 8432(a) or 8351 of this title;

(ii) all contributions made to such Fund for the benefit of the individual under section 8432(c) of this title; and

(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

(b)(1) For the purposes of this subsection, the term "qualified public accountant" shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board and the Comptroller General of the United States a report on his examination, including his determination under this paragraph.

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[96] P.L. 100-43, §2(a), added subsection (h).
[97] P.L. 100-43, §2(b), added subsection (i).

(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

(A) a periodic statement relating to the individual's account; and

(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title.

(d) Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3), respectively, of section 8438(a) of this title shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in either such Fund is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

§8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1954—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to, 401(k)(4)(B) of such Code,[98] any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b) NONDISCRIMINATION REQUIREMENTS.—Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) of title 26, United States Code, or to matching contributions (as described in section 401(m) of title 26, United States Code), so long as it meets the requirements of this section.[99]

(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

§ 8440a. Justices and judges[100]

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to chapter 84 of this title: *Provided, however,* That a justice or judge may make the first such election within 60 days of the effective date of this section.

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.

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[98]P.L. 100-202, §101(m), struck out "the provisions of subsection (b) and".
P.L. 100-647, §1011A(m)(2), inserted ", 401(k)(4)(B) of such Code," after "subsection (b)". Executed as if this insertion was made after "subject to".
[99]P.L. 100-202, §101(m), amended subsection (b) in its entirety.
[100]P.L. 100-654, §401(a), added §8440a.

(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

(5) Section 8433(d) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

(6) Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

(7) The provisions of section 8351(b)(7) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.

§ 8440a. Bankruptcy judges and magistrates[101]

(a)(1) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(B) Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge's or magistrate's annuity under section 377 of title 28 commences.

(C) Section 8433(d) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(5) With respect to bankruptcy judges and magistrates to whom this section applies, retirement under section 377 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms "retirement" and "retire" include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

(7) Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

(8) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

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[101] P.L. 100-659, §7(a), added this §8440a. Probably should be redesignated as §8440b.

SUBCHAPTER IV—SURVIVOR ANNUITIES

§8441. Definitions

For the purpose of this subchapter—

(1) the term "widow" means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) the term "widower" means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) the term "dependent", in the case of any child, means that the employee, Member, or annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

(4) the term "child" means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

§8442. Rights of a widow or widower

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, (or one-half thereof, if designated for this purpose under section 8419 of this title),[100] unless—

(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

(A) an amount equal to the sum of—

(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

(ii) $15,000 as adjusted under section 8462(e); and

(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

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[100] P.L. 100-238, §131(b)(1), inserted "(or one-half thereof, if designated for this purpose under section 8419 of this title),".

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

(A) in a lump sum; or

(B) on a monthly basis—

(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

(A) an annuity under paragraph (2); or

(B) the lump-sum credit, if the widow or widower is the individual who would be entitled to the lump-sum credit and if such widow or widower files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or

(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Fund.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the

death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) the death of the individual was accidental; or

(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

(2) A supplementary annuity under this subection shall be equal to the lesser of—

(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

(B) the amount determined under paragraph (3).

(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

(i) as of the date on which the annuitant died; and

(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

(4) A supplementary annuity under this subsection—

(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202(e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(5) For the purpose of this subsection, the term "assumed CSRS annuity", as used in the case of a survivor, means the amount of the annuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

(A) as of the day after the date of the annuitant's death;

(B) as if the survivor had made appropriate application therefor; and

(C) as if the service of the deceased annuitant were creditable under such subchapter.

(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a "disability annuitant") is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2) (or one-half thereof if designated for this purpose under section 8419 of this title)[108], rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any

[108]P.L. 100-238, §131(b)(2), inserted "(or one-half thereof if designated for this purpose under section 8419 of this title)".

adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant's death.

(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

§ 8443. Rights of a child

(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

(B) the number of children entitled to a payment under this section for such month.

(2) The applicable amount under this paragraph for any month is the total amount to which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under subchapter III of chapter 83 (including any adjustment based on section 8340) based on the service of such annuitant, employee, or Member, if the service of such annuitant, employee, or Member were creditable under such subchapter.

(3) The applicable amount under this paragraph for any month is the total amount of child's insurance benefits which are payable (or would, on proper application, be payable) under title II of the Social Security Act for such month based on the wages and self-employment income of such annuitant, employee, or Member.

(b) The annuity of a child under this subchapter—

(1) commences on the day after the annuitant, employee, or Member dies;

(2) commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by section 8441(4), if any lump sum paid is returned to the Fund; or

(3) commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum paid is returned to the Fund.

This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

(C) becomes 22 years of age if then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member.

§8444. Rights of a named individual with an insurable interest

The annuity of a survivor named under section 8420(a) is 55 percent of the reduced annuity of the retired employee or Member determined under paragraph (2) of such section 8420(a). The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

§8445. Rights of a former spouse

(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between—

(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(1) shall not commence before—

(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

(B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe;

whichever is later; and

(2) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—

(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

(2) to the extent that such modification involves an annuity under this section.

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

SUBCHAPTER V—DISABILITY BENEFITS

§8451. Disability retirement

(a)(1)(A) An employee who completes at least 18 months of civilian service creditable under section 8411 and has become disabled shall be retired on the employee's own application or on application by the employee's agency.

(B) For purposes of this subsection, an employee shall be considered disabled only if the employee is found by the Office to be unable, because of disease or injury, to render useful and efficient service in the employee's position.

(2)(A) Notwithstanding paragraph (1), an employee shall not be eligible for disability retirement under this section if the employee has declined a reasonable offer of reassignment to a vacant position in the employee's agency for which the employee is qualified if the position—

(i) is at the same grade (or pay level) as the employee's most recent grade (or pay level) or higher;

(ii) is within the employee's commuting area; and

(iii) is one in which the employee would be able to render useful and efficient service.

(B) An employee who is applying for disability retirement under this subchapter shall be considered for reassignment by the employee's agency to a vacant position described in subparagraph (A) in accordance with such procedures as the Office shall by regulation prescribe.

(C) An employee is entitled to appeal to the Merit Systems Protection Board under section 7701 any determination that the employee is not unable, because of disease or injury, to render useful and efficient service in a position to which the employee has declined reassignment under this section.

(D) For purposes of subparagraph (A), an employee of the United States Postal Service shall not be considered qualified for a position if such position is in a different craft or if reassignment to such position would be inconsistent with the terms of a collective-bargaining agreement covering the employee.

(b) A Member who completes at least 18 months of service as a Member and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application.

(c) An employee or Member retiring under this section is entitled to an annuity computed under section 8452.

§8452. Computation of disability annuity

(a)(1)(A) Except as provided in paragraph (2), or subsection (b), (c), or (d), the annuity of an annuitant under this subchapter—

(i) for the period beginning on the date on which such annuity commences, or is restored (as described in section 8455(b)(2) or (3)), and ending at the end of the twelfth month beginning on or after such date, shall be equal to 60 percent of the annuitant's average pay; and

(ii) after the end of the period referred to in clause (i), shall be equal to 40 percent of the annuitant's average pay.

(B) An annuity computed under this paragraph—

(i) shall not, during any period referred to in subparagraph (A)(i), be adjusted under section 8462; but

(ii) shall, after the end of any period referred to in subparagraph (A)(i), be adjusted to reflect all adjustments made under section 8462(b) after the end of the period referred to in subparagraph (A)(i), whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.[104]

(2)(A) For any month in which an annuitant is entitled both to an annuity under this subchapter as computed under paragraph (1) and to a disability insurance benefit under section 223 of the Social Security Act, the annuitant's annuity for such month (as so computed) shall—

(i) if such month occurs during a period referred to in paragraph (1)(A)(i), be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month; or

(ii) if such month occurs other than during a period referred to in paragraph (1)(A)(i), be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month;

[104] P.L. 100-238, §122(c)(2)(A), amended subparagraph (B) in its entirety.

except that an annuity may not be reduced below zero by reason of this paragraph.

(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

(I) the amount of the disability insurance benefit to which the annuitant is entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commences, or is restored, or, if no entitlement to such disability insurance benefits exists for such month, the first month thereafter for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act, adjusted by

(II) all adjustments made under section 8462(b) after the end of the period referred to in paragraph (1)(A)(i) (or, if later, after the end of the month preceding the first month for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act) and before the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).[105]

(ii) For purposes of applying section 224 of the Social Security Act to the assumed disability insurance benefit used to compute the reduction under this paragraph, the amount of the annuity under this subchapter which is considered shall be the amount of the annuity as determined before the application of this paragraph.

(3) Section 8462 shall apply with respect to amounts under this subsection only as provided in paragraphs (1) and (2).[106]

(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's "redetermination date"), such annuity shall be redetermined by the Office in accordance with paragraph (2). Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

(2)(A) An annuity redetermined under this subsection shall be equal to the amount of the annuity to which the annuitant would be entitled under section 8415, taking into account the provisions of subparagraph (B).

(B) In performing a computation under this paragraph—

(i) creditable service of an annuitant shall be increased by including any period (or periods) before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).[107]

(c) Except as provided in subsection (d), the annuity of an annuitant under this subchapter shall be computed under section 8415 if—

(1) such annuity commences, or is restored, beginning on or after the redetermination date of the annuitant; or

(2) as of the day on which such annuity commences, or is restored, the annuitant satisfies the age and service requirements for entitlement to an annuity under section 8412 (other than subsection (g) of such section).

(d) (1)[108] The annuity to which an annuitant is entitled under this section (after the reduction under subsection (a)(2), if applicable, has been made) shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (f) of such section).

(2) In applying this subsection with respect to any annuitant, the amount of an annuity so computed under section 8415 shall be adjusted under section 8462 (including subsection (c) thereof)—

(A) to the same extent, and otherwise in the same manner, as if it were an annuity—

(i) subject to adjustment under such section; and

(ii) with a commencement date coinciding with the date the annuitant's annuity commenced or was restored under this subchapter, as the case may be; and

(B) whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.[109]

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[105] P.L. 100-238, §122(a), amended clause (i) in its entirety.
[106] P.L. 100-238, §122(c)(2)(B), added paragraph (3).
[107] P.L. 100-238, §122(b), amended subsection (b) in its entirety.
[108] P.L. 100-238, §122(c)(1)(A), inserted "(1)".
[109] P.L. 100-238, §122(c)(1)(B), added paragraph (2).

§8453. Application

A claim may be allowed under this subchapter only if application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who, at the date of separation from service or within 1 year thereafter, is mentally incompetent if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

§8454. Medical examination

An annuitant receiving a disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until becoming 60 years of age;

unless the disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

§8455. Recovery; restoration of earning capacity

(a)(1) If an annuitant receiving a disability retirement annuity from the Fund recovers from the disability before becoming 60 years of age, payment of the annuity terminates on reemployment by the Government or 1 year after the date on which the Office determines that the annuitant has recovered, whichever is earlier.

(2) If an annuitant receiving a disability annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates 180 days after the end of the calendar year in which earning capacity is so restored. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(b)(1) If an annuitant whose annuity is terminated under subsection (a) is not reemployed in a position in which that individual is subject to this chapter, such individual is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of subchapter II of this chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of such subchapter.

(2) If an annuitant whose annuity is terminated under subsection (a)(2)—

(A) is not reemployed in a position subject to this chapter; and

(B) has not recovered from the disability for which that individual was retired;

the annuity of such individual shall be restored at the applicable rate under section 8452 effective the first of the year following any calendar year in which such individual's income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement.

(3) If an annuitant whose annuity is terminated because of a medical finding that the individual has recovered from disability is not reemployed in a position in which such individual is subject to this chapter, the annuity of such individual shall be restored at the applicable rate under section 8452 effective from the date on which the Office determines that there has been a recurrence of the disability.

(4) Paragraphs (2) and (3) shall not apply in the case of an annuitant receiving an annuity from the Fund under subchapter II of this chapter.[110]

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SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

§8461. Authority of the Office of Personnel Management

(a) The Office shall pay all benefits that are payable under subchapter II, IV, V, or VI of this chapter from the Fund.

(b) The Office shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, the Secretary of Labor, or any other officer[111] or agency.

(c) The Office shall adjudicate all claims under the provisions of this chapter administered by the Office.

(d) The Office shall determine questions of disability and dependency arising under the provisions of this chapter administered by the Office. Except to the extent provided under subsection (e), the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time

[110] P.L. 100-238, §124(b)(1), struck out the former §8456 and redesignated §8457 as §8456.
[111] As in original. Possibly should be "office".

such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under the provisions of this chapter administered by the Office. The Office may suspend or deny annuity for failure to submit to examination.

(e)(1) Subject to paragraph (2), an administrative action or order affecting the rights or interests of an individual or of the United States under the provisions of this chapter administered by the Office may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8451, the procedures under section 7701 shall apply and the decision of the Board shall be subject to judicial review under section 7703.

(f) The Office shall fix the fees for examinations made under subchapter V of this chapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering the provisions of this chapter administered by the Office.

(g) The Office may prescribe regulations to carry out the provisions of this chapter administered by the Office.

(h)(1) Each Government agency shall furnish the Director with such information as the Director determines necessary in order to administer this chapter.

(2) The Director, in consultation with the officials from whom such information is requested, shall establish (by regulation or otherwise) such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(i) In making a determination of "actuarial equivalence" under this chapter, the economic assumptions used shall be the same as the economic assumptions most recently used by the Office (before the determination of actuarial equivalence involved) in determining the normal-cost percentage of the System.

(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this chapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

(k)(1) The Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, may—

(A) maintain exclusive records relating to elections, contributions, and accounts under the Thrift Savings Plan provided in subchapter III of this chapter in the case of employees of the Central Intelligence Agency;

(B) provide that contributions by, or on behalf of, such employees to the Thrift Savings Plan be accounted for by such Executive Director in aggregate amounts;

(C) make the necessary disbursements from, and the necessary allocations of earnings, losses, and charges to, individual accounts of such employees under the Thrift Savings Plan; and

(D) perform such other functions under subchapters III and VII of this chapter (but not including investing sums in the Thrift Savings Fund) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, determines to be appropriate.

(2) The Executive Director of the Federal Retirement Thrift Investment Board may not exercise authority under this chapter in the case of employees of the Central Intelligence Agency to the extent that the Director of Central Intelligence exercises authority provided in paragraph (1).

(3) The Executive Director of the Federal Retirement Thrift Investment Board shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence determines necessary to carry out this subsection.

(l) Subsection (h)(1), and sections 8439(b) and 8474(c)(4), shall be applied with respect to information relating to employees of the Central Intelligence Agency in a manner that protects intelligence sources, methods, and activities.

(m)(1) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall by regulation prescribe appropriate procedures to carry out subsections (j), (k), and (l).

(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund under this chapter.

(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

§8462. Cost-of-living adjustments

(a) For the purpose of this section—

(1) the term "base quarter", as used with respect to a year, means the calendar quarter ending on September 30 of such year;

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter; and

(3) the term "percent change in the price index", as used with respect to a year, means the percentage derived by—

(A) reducing—

(i) the price index for the base quarter of such year, by

(ii) the price index for the base quarter of the preceding year in which an adjustment under this subsection was made;

(B) dividing the difference under subparagraph (A) by the price index referred to in subparagraph (A)(ii); and

(C) multiplying the quotient under subparagraph (B) by 100.

(b)(1) Except as provided in subsection (c), effective December 1 of any year in which an adjustment under this subsection is to be made, as determined under paragraph (2), each annuity payable from the Fund under this chapter (other than an annuity under section 8443) having a commencing date not later than such December 1 shall be adjusted as follows:

(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity subject to adjustment under this subsection shall be increased by the lesser of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent); or

(ii) 2 percent.

(B) If the percent change in the price index for the year exceeds 3 percent, each annuity subject to adjustment under this subsection shall be increased by the excess of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent), over

(ii) 1 percent.

(2) An adjustment under this subsection shall be made in a year only if the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year in which an adjustment under this subsection was made.

(3) An annuity under this chapter shall not be subject to adjustment under section 8340. Nothing in the preceding sentence shall affect the computation of any amount under section 8443(a)(2).

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to an annuitant or survivor (other than a child under section 8443) whose annuity has not been increased under this subsection or subsection (b) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase; or

(ii) in the case of a survivor of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443) shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

(3)(A) An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

(B)(i) Except as provided in clause (ii), this paragraph applies only with respect to an annuitant under section 8412, 8413, or 8414.

(ii) This paragraph does not apply with respect to an annuitant under subsection (d) or (e) of section 8412 or (in the case of an annuitant separated from service as a military reserve technician as a result of disability) under section 8414(c).

(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's annuity is based; or

(ii) if the annuity of the annuitant (referred to in clause (i)) has not been increased under this section, the commencement date of such annuitant's annuity (determined subject to section 8452(a)(1)(B)).

(d) The monthly installment of an annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall, after adjustment, reflect an increase of at least $1.

(e) The $15,000 amount referred to in section 8442(b)(1)(A)(ii) shall be increased at the same time that, and by the same percent as the percentage by which, annuities under subchapter III of chapter 83 are increased.

§8463. Rate of benefits

Each annuity payable from the Fund is stated as an annual amount, one-twelfth of which, rounded to the next lower dollar, constitutes the monthly rate payable on the first business day of the first month beginning after the month for which it has accrued.

§8464. Commencement and termination of annuities of employees and Members

(a)(1) Except as otherwise provided in this chapter—

(A) an annuity payable from the Fund commences on the first day of the month after—

(i) separation from the service, in the case of an employee or Member retiring under section 8412, or subsection (a) or (b)(1)(B) of section 8414; or

(ii) pay ceases, and the applicable age and service requirements are met, in the case of an employee or Member retiring under section 8413;

(B) an annuity payable from the Fund commences on the day after separation from the service in the case of an employee retiring under subsection (b)(1)(A) or (c) of section 8414; and

(C) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.

(2) Notwithstanding paragraph (1)(A)(i), an annuity payable from the Fund commences on the day after separation from the service in the case of an employee or Member—

(A) who retires under section 8412; and

(B) whose separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

(b) Except as otherwise provided in this chapter, the annuity of an annuitant under subchapter II or V of this chapter terminates on the date death or other terminating event occurs.

§8464a. Relationship between annuity and workers' compensation[112]

(a)(1) An individual is not entitled to receive—

(A) an annuity under subchapter II or V, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chpater 81, other than compensation payable under section 8107,

covering the same period of time.

(2) An individual is not entitled to receive an annuity under subchapter IV and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this chapter or subchapter I of chapter 81.

(b) If an individual is entitled to an annuity under subchapter II, IV, or V, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under subchapter II, IV, or V warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

§8465. Waiver, allotment, and assignment of benefits

(a) An individual entitled to an annuity payable from the Fund may decline to accept all or any part of the amount of the annuity by a waiver signed and filed with the Office. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(b) An individual entitled to an annuity payable from the Fund may make allotments or assignments of amounts from the annuity for such purposes as the Office considers appropriate.

§8466. Application for benefits

(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

§8467. Court orders

(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.

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[112] P.L. 100-238, §124(a)(1)(B), added §8464a.

(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

§8468. Annuities and pay on reemployment[113]

(a) If an annuitant, except a disability annuitant whose annuity is terminated because of the annuitant's recovery or restoration of earning capacity, becomes employed in an appointive or elective position, an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant's pay, except for lump-sum leave payment purposes under section 5551. Unless the annuitant's appointment is on an intermittent basis or is to a position as a justice or judge (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees, or unless the annuitant is serving as President, deductions for the Fund shall be withheld from the annuitant's pay under section 8422(a) and contributions under section 8423 shall be made. The deductions and contributions referred to in the preceding provisions of this subsection shall be deposited in the Treasury of the United States to the credit of the Fund. The annuitant's lump-sum credit may not be reduced by annuity paid during the reemployment.

(b) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, the annuitant's annuity on termination of reemployment shall be increased by an annuity computed under section 8415(a) through (f) as may apply based on the period of reemployment and the basic pay, before deduction, averaged during the reemployment.

(B)(i) If the annuitant is receiving a reduced annuity as provided in section 8419, the increase in annuity payable under subparagraph (A) is reduced by 10 percent and the survivor annuity or combination of survivor annuities payable under section 8442 or 8445 (or both) is increased by 50 percent of the increase in annuity payable under subparagraph (A), unless, at the time of claiming the increase payable under subparagraph (A), the annuitant notifies the Office in writing that the annuitant does not desire the survivor annuity to be increased.

(ii) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for not less than 1 year of full-time service (or the equivalent thereof, in the case of full-time employment), the survivor annuity payable is increased as though the reemployment had otherwise terminated.

(2)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, the annuitant may elect, instead of the benefit provided by paragraph (1), to have such annuitant's rights redetermined under this chapter.

(B) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for at least 5 years of full-time service (or the equivalent thereof in the case of part-time employment), any person entitled to a survivor annuity under section 8442 or 8445 based on the service of such annuitant shall be permitted to elect, in accordance with regulations prescribed by the Office of Personnel Management, to have such person's rights under subchapter IV redetermined. A redetermined survivor annuity elected under this subparagraph shall be in lieu of an increased annuity which would otherwise be payable in accordance with paragraph (1)(B)(ii).

(3) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for a period of less than 1 year, or on a part-time basis for periods equivalent to less than 1 year of full-time service, the total amount withheld under section 8422(a) from the annuitant's basic pay for the period or periods involved shall, upon written application to the Office, be payable to the annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8424(d)).

(c) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(d) If an annuitant becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, the annuitant may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8424(a), the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

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[113]P.L. 100-238, §134(a), amended §8468 in its entirety.

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(e) A reference in this section to an "annuity" shall not be considered to include any amount payable from a source other than the Fund.

§8469. Withholding of State income taxes

(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated[114] or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(e) For the purpose of this section—

(1) the term "State" means a State, the District of Columbia, or any territory or possession of the United States; and

(2) the term "annuitant" includes a survivor who is receiving an annuity from the Fund.

§8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

§8471. Definitions

For the purposes of this subchapter—

(1) the term "beneficiary" means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

(2) the term "Council" means the Employee Thrift Advisory Council established under section 8473 of this title;

(3) the term "participant" means an individual for whom an account has been established under section 8439 of this title;

(4) the term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

(5) the term "Thrift Savings Fund" means the Thrift Savings Fund established under section 8437 of this title.

§8472. Federal Retirement Thrift Investment Board

(a) There is established in the Executive branch of the Government a Federal Retirement Thrift Investment Board.

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[114] As in original. Possibly should be "designation".

(b) The Board shall be composed of—

(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

(2) 2 members appointed by the President, of whom—

(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

(c) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, appointments under subsection (a) shall be made by and with the advice and consent of the Senate.

(d) Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(e)(1) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, a member of the Board shall be appointed for a term of 4 years, except that of the members first appointed (other than the members appointed under such section)—

(A) the Chairman shall be appointed for a term of 4 years;

(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

(C) the remaining members shall be appointed for terms of 2 years.

(2)(A) A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) The term of any member shall not expire before the date on which the member's successor takes office.

(f) The Board shall—

(1) establish policies for—

(A) the investment and management of the Thrift Savings Fund; and

(B) the administration of subchapter III of this chapter;

(2) review the performance of investments made for the Thrift Savings Fund; and

(3) review and approve the budget of the Board.

(g)(1) The Board may—

(A) adopt, alter, and use a seal;

(B) except as provided in paragraph (2), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(C) upon the concurring votes of four members, remove the Executive Director from office for good cause shown; and

(D) take such other actions as may be necessary to carry out the functions of the Board.

(2) Except in the case of investments required by section 8438 of this title to be invested in securities of the Government, the Board may not direct the Executive Director to invest or to cause to be invested any sums in the Thrift Savings Fund in a specific asset or to dispose of or cause to be disposed of any specific asset of such Fund.

(h) The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this subchapter and subchapter III of this chapter.

(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law.

§8473. Employee Thrift Advisory Council

(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 14 members appointed by the Chairman of the Board in accordance with subsection (b).

(b) The Chairman shall appoint 14 members of the Council, of whom—

(1) 4 shall be appointed to represent the respective labor organizations representing (as exclusive representatives) the first, second, third, and fourth largest numbers of individuals subject to chapter 71 of this title;

(2) 2 shall be appointed to represent the respective labor organizations which have been accorded exclusive recognition under section 1203(a) of title 39 representing the largest and second largest numbers of individuals employed by the United States Postal Service;

(3) 1 shall be appointed to represent the labor organization which has been accorded exclusive recognition under section 1203(a) of title 39 representing the largest number of individuals employed by the United States Postal Service as rural letter carriers;

(4) 2 shall be appointed to represent the respective managerial organizations (other than an organization described in paragraph (5)) which consult with the United States Postal Service under section 1004(b) of title 39 and which represent the largest and second largest numbers of individuals employed by the United States Postal Service as managerial personnel;

(5) 1 shall be appointed to represent the supervisors' organization as defined in section 1004(h) of title 39;

(6) 1 shall be appointed to represent employee organizations having as a purpose promoting the interests of women in Government service;

(7) 1 shall be appointed to represent the organization representing the largest number of individuals receiving annuities under this chapter or chapter 83 of this title;

(8) 1 shall be appointed to represent the organization representing the largest number of individuals subject to the Performance Management and Recognition System under chapter 54 of this title; and

(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service.

(c)(1) The Chairman of the Board shall designate 1 member of the Council to serve as head of the Council.

(2) A member of the Council shall be appointed for a term of 4 years.

(3)(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) The term of any member shall not expire before the date on which the member's successor takes office.

(d) The Council shall act by resolution of a majority of the members.

(e) The Council shall—

(1) advise the Board and the Executive Director on matters relating to—

(A) investment policies for the Thrift Savings Fund; and

(B) the administration of this subchapter and subchapter III of this chapter; and

(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III of this chapter.

(f) Section 14(a)(2) of the Federal Advisory Committee Act shall not apply to the Council.

§8474. Executive Director

(a)(1) The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

(2) The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(b) The Executive Director shall—

(1) carry out the policies established by the Board;

(2) invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board;

(3) purchase annuity contracts and provide for the payment of other benefits under subchapter III of this chapter;

(4) administer the provisions of this subchapter and subchapter III of this chapter;

(5) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter and subchapter III of this chapter; and

(6) meet from time to time with the Council upon request of the Council.

(c) The Executive Director may—

(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter;

(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

(4) secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of this subchapter or subchapter III of this chapter and policies of the Board;

(5) make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(6) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2), (3), and (7) of this subsection from the Thrift Savings Fund;

(7) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of this title, including per diem as authorized by section 5702 of this title;

(8) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

(9) take such other actions as are appropriate to carry out the functions of the Executive Director.

§8475. Investment policies

The Board shall develop investment policies under section 8472(f)(1) of this title which provide for—

(1) prudent investments suitable for accumulating funds for payment of retirement income; and

(2) low administrative costs.

§8476. Administrative provisions

(a) The Board shall meet—

(1) not less than once during each month; and

(2) at additional times at the call of the Chairman.

(b)(1) Except as provided in sections 8472(g)(1)(C) and 8474(a)(1) of this title, the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board.

(2) A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

(c) Three members of the Board shall constitute a quorum for the transaction of business.

(d)(1) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for grade GS-18 of the General Schedule for each day during which such member is engaged in performing a function of the Board.

(2) A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of this title while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

(3) Payments authorized under this subsection shall be paid from the Thrift Savings Fund.

(e) The accrued annual leave of any employee who is a member of the Board or the Council shall not be charged for any time used in performing services for the Board or the Council.

§8477. Fiduciary responsibilities; liability and penalties

(a) For the purposes of this section—

(1) the term "account" is not limited by the definition provided in section 8401(1);

(2) the term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering

price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

(3) the term "fiduciary" means—

(A) a member of the Board;

(B) the Executive Director;

(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and

(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and

(4) the term "party in interest" includes—

(A) any fiduciary;

(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

(C) any participant;

(D) any person providing services to the Board and, with respect to the actions of the Executive Director as a fiduciary any person providing services to the Executive Director;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of—

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

(c)(1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not—

(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

(3)(A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.

(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is—

(i) administratively feasible;

(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and

(iii) protective of the rights of participants and beneficiaries of such Fund.

(D) An exemption under this paragraph may not be granted unless—

(i) notice of the proposed exemption is published in the Federal Register;

(ii) interested persons are given an opportunity to present views; and

(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).

(d) This section does not prohibit any fiduciary from—

(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;

(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(e)(1)(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate, except as provided in paragraphs (3) and (4) of this subsection[115]. A fiduciary may be removed for a breach referred to in the preceding sentence.

(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986[116]) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

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[115]P.L. 100-238, §133(a)(1), inserted ", except as provided in paragraphs (3) and (4) of this subsection". This amendment is repealed effective on December 31, 1990.

[116]P.L. 100-238, §133(a)(2), struck out "1954" and substituted "1986". This amendment is repealed effective on December 31, 1990.

(C) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only[117] if—

(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986), or in continuing such allocation; or

(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

(2) No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).[118]

(3) A civil action may be brought in the district courts of the United States—

(A) by the Secretary of Labor against any fiduciary other than a Member of the Board or the Executive Director of the Board—

(i) to determine and enforce a liability under paragraph (1)(A);

(ii) to collect any civil penalty under paragraph (1)(B);

(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

(v) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

(B) by any participant, beneficiary, or fiduciary against any fiduciary—

(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision;

(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title; or

(C) by any participant or beneficiary—

(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or

(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, provided that[119] the remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of his duties or employment shall be[120] exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or not such action or proceeding is based on an alleged violation of subsection (b) or (c).[121]

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[117] P.L. 100-238, §133(a)(3), inserted "only". This amendment is repealed effective on December 31, 1990.

[118] P.L. 100-238, §133(a)(5), amended paragraph (2) in its entirety. This amendment is repealed effective on December 31, 1990.

[119] P.L. 100-366, §3(a)(1)(A), struck out "if" and substituted "provided that".

[120] P.L. 100-366, §3(a)(1)(B), struck out "is" and substituted "shall be".

[121] P.L. 100-238, §133(a)(5), amended paragraph (3) in its entirety. This amendment is repealed effective on December 31, 1990.

(4)(A) In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), however all such litigation shall be subject to the direction and control of the Attorney General.

(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Executive Director of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

(ii) deemed a tort action brought against the United States under the provisions of title 28 and all references thereto.

(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect. To the extent section 2672 of title 28 provides that persons other than the Attorney General or his designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsection (b) or (c).

(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2680(h) of title 28 shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the Thrift Savings Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

(G) For purposes of paragraph (3)(C)(ii), fiduciary includes only the Members of the Board and the Board's Executive Director.[123]

(5) Any relief awarded against a Member of the Board or the Executive Director of the Board in a civil action authorized by paragraph (3)[123] may not include any monetary damages or any other recovery of money.[124]

(6) An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.[125]

(7)[126] (A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

(8)[127] (A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

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[123]P.L. 100-238, §133(a)(5), added this paragraph (4). This amendment is repealed effective on December 31, 1990.
[123]P.L. 100-366, §3(a)(2), struck out "paragraphs (3) and (4)" and substituted "paragraph (3)".
[124]P.L. 100-238, §133(a)(5), added this paragraph (5). This amendment is repealed effective on December 31, 1990.
[125]P.L. 100-238, §133(a)(5), added paragraph (6). This amendment is repealed effective on December 31, 1990.
[126]P.L. 100-238, §133(a)(4), redesignated paragraph (4) as paragraph (7). This amendment is repealed effective on December 31, 1990.
[127]P.L. 100-238, §133(a)(4), redesignated paragraph (5) as paragraph (8). This amendment is repealed effective on December 31, 1990.

(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

(f) The Secretary of Labor may prescribe regulations to carry out this section.

(g)(1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

§8478. Bonding

(a)(1) Except as provided in paragraph (2), each fiduciary and each person who handles funds or property of the Thrift Savings Fund shall be bonded as provided in this section.

(2)(A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary—

(i) is a corporation organized and doing business under the laws of the United States or of any State;

(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) is subject to supervision or examination by Federal or State authority; and

(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than $1,000,000) as the Secretary of Labor prescribes in regulations.

(B) If—

(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),

(ii) the bank or financial institution is authorized to exercise trust powers, and

(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

(b)(1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) A bond required by subsection (a)—

(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31; and

(3) shall be in a form or of a type approved by the Secretary of Labor, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(d)(1) It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

§8478a. Investigative authority

Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.

§8479. Exculpatory provisions; insurance

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void.

(b)(1) The Executive Director may require employing agencies to contribute an amount not to exceed 1 percent of the amount such agencies are required to contribute in accordance with section 8432(c) of this title to the Thrift Savings Fund.

(2) The sums credited to the Thrift Savings Fund under paragraph (1) shall be available and may be used at the discretion of the Executive Director to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the Thrift Savings Fund, without regard to whether a policy of insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation.

CHAPTER 85—UNEMPLOYMENT COMPENSATION

Subchapter I—Employees Generally

§8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(C) by members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;

(D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

(F) by an individual receiving nominal pay and allowances of $12 or less a year;

(G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(H) by a student-employee as defined by section 5351 of this title;

(I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(J) by an individual employed under a Federal relief program to relieve him from unemployment;

(K) as a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(L) by an officer or a member of the crew on or in connection with an American vessel--

(i) owned by or bareboat chartered to the United States; and

(ii) whose business is conducted by a general agent of the Secretary of Commerce;

if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service;

(3) "Federal employee" means an individual who has performed Federal service;

(4) "compensation" means cash benefits payable to an individual with respect to his unemployment including any portion thereof payable with respect to dependents;

(5) "benefit year" means the benefit year as defined by the applicable State unemployment compensation law, and if not so defined the term means the period prescribed in the agreement under this subchapter with a State or, in the absence of such an agreement, the period prescribed by the Secretary of Labor;

(6) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(7) "United States", when used in a geographical sense, means the States; and

(8) "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

§8502. Compensation under State agreement

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

[(c) Repealed.[128]]

(d) A determination by a State agency with respect to entitlement to compensation under an agreement is subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(e) Each agreement shall provide the terms and conditions on which it may be amended or terminated.

§8503. Compensation absent State agreement

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 8504 of this title to a State which does not have an agreement with the Secretary of Labor, the Secretary, under regulations prescribed by him, shall, on the filing by the Federal employee of a claim for compensation under this subsection, pay compensation to him in the same amount, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the State if his Federal service and Federal wages had been included as employment and wages under that State law. However, if the Federal employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of compensation under this subsection may be made only on the basis of his Federal service and Federal wages.

(b) A Federal employee whose claim for compensation under subsection (a) of this section is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary with respect to entitlement to compensation under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.

§8504. Assignment of Federal service and wages

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

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[128] P.L. 90-83, §1(86)(B); 81 Stat. 218.

§8505. Payments to States

(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages.

(b) Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, the sum that the Secretary estimates the State is entitled to receive under this subchapter for each calendar month. The sum shall be reduced or increased by the amount which the Secretary finds that his estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Secretary and the State agency.

(c) The Secretary, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of this subchapter.

(d) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the agreement, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

(e) An agreement may—

(1) require each State officer or employee who certifies payments or disburses funds under the agreement, or who otherwise participates in its performance, to give a surety bond to the United States in the amount the Secretary considers necessary; and

(2) provide for payment of the cost of the bond from funds for carrying out the purposes of this subchapter.

(f) In the absence of gross negligence or intent to defraud the United States, an individual designated by the Secretary, or designated under an agreement, as a certifying official is not liable for the payment of compensation certified by him under this subchapter.

(g) In the absence of gross negligence or intent to defraud the United States, a disbursing official is not liable for a payment by him under this subchapter if it was based on a voucher signed by a certifying official designated as provided by subsection (f) of this section.

(h) For the purpose of payments made to a State under subchapter III of chapter 7 of title 42, administration by a State agency under an agreement is deemed a part of the administration of the State unemployment compensation law.

§8506. Dissemination of information

(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this subchapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter. The information shall include the findings of the employing agency concerning—

(1) whether or not the Federal employee has performed Federal service;

(2) the periods of Federal service;

(3) the amount of Federal wages; and

(4) the reasons for termination of Federal service.

The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. This subsection does not apply with respect to Federal service and Federal wages covered by subchapter II of this chapter.

(b) The agency administering the unemployment compensation law of a State shall furnish the Secretary such information as he considers necessary or appropriate in carrying out this subchapter. The information is deemed the report required by the Secretary for the purpose of section 503(a)(6) of title 42.

§8507. False statements and misrepresentations

(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as compensation under this subchapter to which he was not entitled;

the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from compensation payable to the individual under this subchapter during the 2-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 8502(d) and 8503(c) of this title.

(b) An amount repaid under subsection (a) of this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

§8508. Regulations

The Secretary of Labor may prescribe rules and regulations necessary to carry out this subchapter and subchapter II of this chapter. The Secretary, insofar as practicable, shall consult with representatives of the State unemployment compensation agencies before prescribing rules or regulations which may affect the performance by the State agencies of functions under agreements under this subchapter.

§8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the "Account") in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after December 31, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1981) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in paragraph (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

(h) For purposes of this section, the term "Federal service" includes Federal service as defined in section 8521(a).

Subchapter II—Ex-Servicemen

§8521. Definitions; application

(a) For the purpose of this subchapter—

(1) "Federal service" means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service—

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship, or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

(c)(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment.

§8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed as assignment under section 8504 of this title for the purpose of this subchapter.

§8523. Dissemination of information

(a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.

(b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:

(1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to—

(A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;

(B) the periods of Federal service; and

(C) the pay grade of the individual at the time of his latest discharge or release from Federal service.

(2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

[§8524. Repealed.[129]]

§8525. Effect on other statutes

[(a) Repealed.[130]]

(b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives—

(1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or

(2) an educational assistance allowance under chapter 35 of title 38.

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CHAPTER 89—HEALTH INSURANCE

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§8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title,[131] or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title[132].

(2) INDEMNITY BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) EMPLOYEE ORGANIZATION PLANS.—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) COMPREHENSIVE MEDICAL PLANS.—

(A) GROUP-PRACTICE PREPAYMENT PLANS.—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) INDIVIDUAL-PRACTICE PREPAYMENT PLANS.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

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[129] P.L. 91-373, §107, 84 Stat. 701.

[130] P.L. 90-83, §1(90); 81 Stat. 219.

[131] P.L. 100-654, §202(b)(1), struck out "or former spouses," and substituted "former spouses, or persons having continued coverage under section 8905a of this title,".

[132] P.L. 100-654, §202(b)(2), struck out "or former spouse" and substituted "former spouse, or person having continued coverage under section 8905a of this title".

(C) MIXED MODEL PREPAYMENT PLANS.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

§8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

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§8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

(1) the service benefit plan;

(2) the indemnity benefit plan;

(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and

(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office)[133]

(c) There shall be withheld from the pay of each enrolled employee and the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

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[133]As in original. Should have a period.

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(f) The Government contributions for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Clerk of the House of Representatives, from the contingent fund of the House; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraph (2), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after October 1, 1986, shall be paid by the United States Postal Service.

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

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[*Internal References.*—There are citations to title 5, United States Code, in Social Security Act §§202(b), (c), (e), (f), (g), and (x); 205(r); 210(a) and (p); 215(h); 217(f); 226(g); 706(b) and (c); 708(a); 908(d); 909; 1102(b); 1106(c); 1114(b), (f), and (g); 1122(i); 1125(b); 1139(f); 1153(d); 1160(a); 1816(e); 1840(d); 1845(a); 1847(a); 1869(b); 1871(b); 1878(f) and (h); 1882(b); and 1886(e). P.L. 91-173, §402(g) (Vol. II, p. 572) cites §8101(17); §426(a) cites §553; and §428(b) cites §§554 and 5332 of Title 5. Social Security Act §1106 has a footnote to this title. Social Security Act §907(c) cites §507 of the Elementary and Secondary Education Act of 1965; a footnote refers readers instead to 5 U.S.C. 3371-3376. 14 U.S.C. 707(e)(3) (Vol. II, p. 144) cites §8133(a)(2) and (a)(3) of title 5.]

APPENDIX

REORGANIZATION PLAN NO. 2 of 1946[1]

Approved December 20, 1945 (60 Stat. 1095)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 16, 1946, pursuant to the provisions of the Reorganization Act of 1945, approved December 20, 1945.

FEDERAL SECURITY AGENCY[2] AND DEPARTMENT OF LABOR

SECTION 1. *Children's Bureau.*—(a) The Children's Bureau in the Department of Labor, exclusive of its Industrial Division, is transferred to the Federal Security

[1]This plan became effective July 16, 1946.
[2]See "Administration of the Social Security Act" under Preface, p. iii for explanation of change of name from "Federal Security Administrator" and "Federal Security Agency" to "Secretary" and "Department of Health and Human Services".

Agency. All functions of the Children's Bureau and of the Chief of the Children's Bureau except those transferred by subsection (b) of this section, all functions of the Secretary of Labor under Title V of the Social Security Act (49 Stat. 620, ch. 531), as amended, and all other functions of the Secretary of Labor relating to the foregoing functions are transferred to the Federal Security Administrator and shall be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he shall designate, except that the functions authorized by section 2 of the act of April 9, 1912 (37 Stat. 79, ch. 73), as amended, and such other functions of the Federal Security Agency as the Administrator may designate, shall be administered, under his direction and control, through the Children's Bureau.

(b) The functions of the Children's Bureau and of the Chief of the Children's Bureau under the Fair Labor Standards Act of 1938 (52 Stat. 1060, ch. 676), as amended, are transferred to the Secretary of Labor and shall be performed under his direction and control by such officers and employees of the Department of Labor as he shall designate.

SEC. 2. *Vital statistics.*—The functions of the Secretary of Commerce, the Bureau of the Census, and the Director of the Bureau of the Census with respect to vital statistics (including statistics on births, deaths, marriages, divorces, and annulments) are transferred to the Federal Security Administrator and shall be performed under his direction and control by the United States Public Health Service or by such officers and employees of the Federal Security Agency as the Administrator shall designate.

[SEC. 3. Repealed.]

SEC. 4. *Social Security Board.*—The functions of the Social Security Board in the Federal Security Agency, together with the functions of its chairman, are transferred to the Federal Security Administrator and shall be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he shall designate. The Social Security Board is abolished.

SEC. 5. *Assistant heads of Federal Security Agency.*—In addition to the existing Assistant Federal Security Administrator, there shall be not to exceed two assistant heads of the Federal Security Agency, each of whom shall be appointed by the Federal Security Administrator under the classified civil service, receive a salary at the rate of $10,000 per annum, and perform such duties and head such constituent unit of the Federal Security Agency as the Administrator may provide.

SEC. 6. *Functions under act of June 20, 1936, with respect to the blind.*—The functions of the Office of Education and of the Commissioner of Education under the act of June 20, 1936 (49 Stat. 1559, ch. 638) are transferred to the Federal Security Administrator and shall be performed under his direction and control by such officers and employees of the Federal Security Agency as he shall designate.

SEC. 7. *Assistant Commissioner of Education.*—The functions of the Assistant Commissioner of Education created by the act of May 26, 1930 (46 Stat. 384, ch. 330) are transferred to the Office of Education to be performed under the direction and control of the Commissioner of Education by such officers or employees of the Office as he may designate with the approval of the Federal Security Administrator. The Office of Assistant Commissioner of Education is abolished.

SEC. 8. *Federal Board for Vocational Education.*—The Federal Board for Vocational Education and its functions are abolished.

SEC. 9. *Board of Visitors of Saint Elizabeth's Hospital.*—The Board of Visitors of Saint Elizabeth's Hospital and its functions are abolished.

SEC. 10. *Coordination of grant-in-aid programs.*—In order to coordinate more fully the administration of grant-in-aid programs by officers and constituent units of the Federal Security Agency, the Federal Security Administrator shall establish, insofar as practicable, (a) uniform standards and procedures relating to fiscal, personnel, and the other requirements common to two or more such programs, and (b) standards and procedures under which a State agency participating in more than one such program may submit a single plan of operation and be subject to a single Federal fiscal and administrative review of its operation.

SEC. 11. *Winding up of affairs.*—Suitable measures shall be taken by the Federal Security Administrator to wind up those outstanding affairs of the agencies herein abolished which are not otherwise disposed of by this plan.

SEC. 12. *Transfer of personnel, property, records, and funds.*—The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Bureau of the Budget shall determine to relate primarily to the functions transferred hereunder are transferred to the respective agencies concerned for use in the administration of the functions so transferred, except that all of the personnel, property, records, and funds

of the Industrial Division of the Children's Bureau shall be transferred to such agency or agencies of the Department of Labor as the Secretary of Labor shall designate. Any of the personnel transferred under this plan which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions transferred to such agency shall be retransferred under existing law to other positions in the Government or separated from the service.

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REORGANIZATION PLAN NO. 2 OF 1949

Approved June 20, 1949 (63 Stat. 1065)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 20, 1949, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.[1]

DEPARTMENT OF LABOR

SECTION 1. *Bureau of Employment Security.*—The Bureau of Employment Security of the Federal Security Agency, including the United States Employment Service and the Unemployment Insurance Service, together with the functions thereof, is transferred as an organizational entity to the Department of Labor. The functions of the Federal Security Administrator with respect to employment services, unemployment compensation, and the Bureau of Employment Security, together with his functions under the Federal Unemployment Tax Act (as amended, and as affected by the provisions of Reorganization Plan No. 2 of 1946, 60 Stat. 1095, 26 U.S.C. 1600-1611), are transferred to the Secretary of Labor. The functions transferred by the provisions of this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

SEC. 2. *Veterans' Placement Service Board.*—The functions of the Veterans' Placement Service Board under Title IV of the Servicemen's Readjustment Act of 1944 (58 Stat. 284, as amended; 38 U.S.C. 695-695f) are transferred to and shall be performed by the Secretary of Labor. The functions of the Chairman of the said Veterans' Placement Service Board are transferred to the Secretary of Labor and shall be performed by the Secretary or, subject to his direction and control, by the Chief of the Veterans' Employment Service. The Veterans' Placement Service Board is abolished.

SEC. 3. *Federal Advisory Council.*—The Federal Advisory Council established pursuant to section 11(a) of the Act of June 6, 1933 (48 Stat. 116, as amended, 29 U.S.C. 49j(a)), is hereby transferred to the Department of Labor and shall, in addition to its duties under the aforesaid Act, advise the Secretary of Labor and the Director of the Bureau of Employment Security with respect to the administration and coordination of the functions transferred by the provisions of this reorganization plan.

SEC. 4. *Personnel, records, property, and funds.*—There are transferred to the Department of Labor, for use in connection with the functions transferred by the provisions of this reorganization plan, the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Bureau of Employment Security, together with so much as the Director of the Bureau of the Budget shall determine of other personnel, property, records, and unexpended balances of appropriations, allocations, and funds (available or to be made available) of the Federal Security Agency which relate to functions transferred by the provisions of this reorganization plan.

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[*Internal References.*—Social Security Act title III; and the catchlines to §§702 and 1106 have footnotes referring to this reorganization plan.]

REORGANIZATION PLAN NO. 19 OF 1950[1] [2]

[1]This plan became effective August 20, 1949.
[2]This plan became effective May 24, 1950.

Approved June 20, 1949 (64 Stat. 1271)

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[*Internal Reference.*—There is a footnote referring to Reorganization Plan No. 19 of 1950 at Social Security Act §1106 catchline.]

REORGANIZATION PLAN NO. 1 OF 1953

Approved June 20, 1949 (67 Stat. 631)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 12, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended.[1]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECTION 1. *Creation of Department; Secretary.*—There is hereby established an executive department, which shall be known as the Department of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Department). There shall be at the head of the Department a Secretary of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate, and who shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 2. *Under Secretary and Assistant Secretaries.*—There shall be in the Department an Under Secretary of Health, Education, and Welfare and two Assistant Secretaries of Health, Education, and Welfare, each of whom shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter provided by law for under secretaries and assistant secretaries, respectively, of executive departments. The Under Secretary (or, during the absence or disability of the Under Secretary or in the event of a vacancy in the office of Under Secretary, an Assistant Secretary determined according to such order as the Secretary shall prescribe) shall act as Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary.

[SEC. 3. Repealed.]

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[1]P.L. 89-554, §8(a), repealed Reorganization Plan No. 19 of 1950, effective September 6, 1966. Reorganization Plan No. 19 of 1950 formerly read as follows:

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

EMPLOYEES' COMPENSATION FUNCTIONS

SECTION 1. *Bureau of Employees' Compensation.*—The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, is transferred to the Department of Labor and shall be administered under the direction and supervision of the Secretary of Labor. The functions of the Federal Security Administrator, and of the Federal Security Agency, with respect to the Bureau of Employees' Compensation and with respect to employees' compensation (including workmen's compensation) are transferred to the Secretary of Labor: *Provided*, That there are not transferred by the provisions of this reorganization plan (1) any function of the Public Health Service; (2) any function of the Federal Security Agency or the Federal Security Administrator under the Vocational Rehabilitation Act, as amended (including the function of assuring the development and accomplishment of State rehabilitation plans affecting beneficiaries under the Federal Employees' Compensation Act); nor (3) the function of developing or establishing rehabilitation services or facilities. The functions transferred by the provisions of this section shall be performed by the Secretary of Labor or, subject to his direction and control, by such officers, agencies, and employees of the Department of Labor as he shall designate.

SEC. 2. *Employees' Compensation Appeals Board.*—The Employees' Compensation Appeals Board of the Federal Security Agency, together with the functions thereof, is transferred to the Department of Labor. The functions of the Federal Security Administrator with respect to the Employees' Compensation Appeals Board are transferred to the Secretary of Labor. The Board shall continue to have authority to hear and, subject to applicable law and the rules and regulations of the Secretary of Labor, to make final decision on appeals taken from determinations and awards with respect to claims of employees of the Federal Government or of the District of Columbia.

SEC. 3. *Personnel, records, property, and funds.*—There are transferred to the Department of Labor, for use in connection with the functions transferred by the provisions of this reorganization plan, the personnel, property, records and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Bureau of Employees' Compensation and the Employees' Compensation Appeals Board, together with so much as the Director of the Bureau of the Budget shall determine of other personnel, property, records and unexpended balances of appropriations, allocations, and funds (available or to be made available) of the Federal Security Agency which relate to functions transferred by the provisions of this reorganization plan.

[1]This plan became effective April 11, 1953.

SEC. 4. *Commissioner of Social Security.*—There shall be in the Department a Commissioner of Social Security who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions concerning social security and public welfare as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter fixed by law for Grade GS-18 of the general schedule established by the Classification Act of 1949, as amended.

SEC. 5. *Transfers to the Department.*—All functions of the Federal Security Administrator are hereby transferred to the Secretary. All agencies of the Federal Security Agency, together with their respective functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), and all other functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Federal Security Agency are hereby transferred to the Department.

SEC. 6. *Performance of Functions of the Secretary.*—The Secretary may from time to time make such provisions as the Secretary deems appropriate authorizing the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department.

SEC. 7. *Administrative Services.*—In the interest of economy and efficiency the Secretary may from time to time establish central administrative services in the fields of procurement, budgeting, accounting, personnel, library, legal, and other services and activities common to the several agencies of the Department; and the Secretary may effect such transfers within the Department of the personnel employed, the property and records used or held, and the funds available for use in connection with such administrative service activities as the Secretary may deem necessary for the conduct of any services so established: *Provided*, That no professional or substantive function vested by law in any officer shall be removed from the jurisdiction of such officer under this section.

SEC. 8. *Abolitions.*—The Federal Security Agency (exclusive of the agencies thereof transferred by section 5 of this reorganization plan), the offices of Federal Security Administrator and Assistant Federal Security Administrator created by Reorganization Plan No. I (53 Stat. 1423), the two offices of assistant heads of the Federal Security Agency created by Reorganization Plan No. 2 of 1946 (60 Stat. 1095), and the office of Commissioner for Social Security created by section 701 of the Social Security Act, as amended (64 Stat. 558), are hereby abolished. The Secretary shall make such provisions as may be necessary in order to wind up any outstanding affairs of the Agency and offices abolished by this section which are not otherwise provided for in this reorganization plan.

SEC. 9. *Interim Provisions.*—The President may authorize the persons who immediately prior to the time this reorganization plan takes effect occupy the offices of Federal Security Administrator, Assistant Federal Security Administrator, assistant heads of the Federal Security Agency, and Commissioner for Social Security to act as Secretary, Under Secretary, and Assistant Secretaries of Health, Education, and Welfare and as Commissioner of Social Security, respectively, until those offices are filled by appointment in the manner provided by sections 1, 2, and 4 of this reorganization plan, but not for a period of more than 60 days. While so acting, such persons shall receive compensation at the rates provided by this reorganization plan for the offices the functions of which they perform.

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[*Internal Reference.*—There is a footnote referring to Reorganization Plan No. 1 of 1953 at Social Security Act §701 catchline.]

TITLE 10, UNITED STATES CODE
Armed Forces
Subtitle A—General Military Law

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PART II—PERSONNEL

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CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE
SUBCHAPTER I—GENERAL PROVISIONS

§801. Article 1. Definitions

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(11) The term[1] "law[2] specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

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(13) The term[3] "judge[4] advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

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CHAPTER 55—MEDICAL AND DENTAL CARE

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§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1976 of this title, except that—

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service;

(3) not more than one eye examination may be provided to a patient in any calendar year;

(4) under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis;

(6) inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of 60 days in any year;

(7) services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;

(8) services of pastoral counselors, family and child counselors, or marital counselors may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral;

(9) special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis;

(10) therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided;

(11) treatment of obesity may not be provided if obesity is the sole or major condition treated;

(12) surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

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[1] P.L. 100-180, §1231(17)(A), inserted "The term".
[2] P.L. 100-180, §1231(17)(B), struck out "Law" and substituted "law".
[3] See footnote 1.
[4] P.L. 100-180, §1231(17)(B), struck out "Judge" and substituted "judge".

(C) neoplastic surgery may be provided;

(13) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in clause (4);[5]

(14) the prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services; and[6]

(15) electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.[7]

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.[8]

(2) Except as provided in clause (3), the first $50 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).[9]

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d) Under joint regulations to be prescribed by the administering Secretaries, in the case of a dependent, as defined in section 1072(2)(A) or (D) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:

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[5] P.L. 100-180, §726(a)(1), struck out "and".
[6] P.L. 100-180, §726(a)(2), struck out the period and substituted "; and".
[7] P.L. 100-180, §726(a)(3), added paragraph (15).
[8] P.L. 100-456, §646(a)(1), added this sentence.
[9] P.L. 100-180, §721(a), added paragraph (5).

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the administering Secretaries.

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 90th percentile of billed charges made for similar services in the same locality during the base period.

(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.

(i) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(1) provided under the program for the handicapped under subsection (d);

(2) provided as residential treatment care;

(3) provided as partial hospital care; or

(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(l)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.[10]

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§1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $50 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $100 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.[11]

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $10,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.[12]

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by section 1072(2)(F) of this title.

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[10] P.L. 100-456, §646(a)(2), added subsection (m).
[11] P.L. 100-456, §646(b)(1), added this sentence.
[12] P.L. 100-180, §721(b), added paragraph (4).

However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(d) The provisions of section 1079(j) of this title shall apply to a plan covered by this section.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076-1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Notwithstanding subsection (d) or any other provision of this chapter, no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in Veterans' Administration facilities.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.[13]

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 151—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

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§2546. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.
(7) Property liability insurance.

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[13] P.L. 100-456, §646(b)(2), added subsection (h).

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

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[*Internal References.*—Social Security Act §§465(a) and 1866(a) cite title 10, and §§2(a), 402(a), 1002(a), 1402(a), 1602(a) [State], and §1612(a) have footnotes to title 10.]

TITLE 11, UNITED STATES CODE

BANKRUPTCY

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CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

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SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

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§523. Exceptions to discharge

(a) A discharge under section 727, 1141,,[1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

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(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

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[*Internal Reference.*—Social Security Act §456(b) cites title 11.]

TITLE 14—UNITED STATES CODE

COAST GUARD

PART I—REGULAR COAST GUARD

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CHAPTER 7—COOPERATION WITH OTHER AGENCIES

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[1]As in original. One comma should be stricken.

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§147a. Department of Health and Human Services

(a) The Commandant may assist the Secretary of Health and Human Services in providing medical emergency helicopter transportation services to civilians. The Commandant may prescribe conditions, including reimbursement, under which resources may be provided under this section. The following specific limitations apply to assistance provided under this section:

(1) Assistance may be provided only in areas where Coast Guard units able to provide the assistance are regularly assigned. Coast Guard units may not be transferred from one area to another to provide the assistance.

(2) Assistance may be provided only to the extent it does not interfere with the performance of the Coast Guard mission.

(3) Providing assistance may not cause an increase in amounts required for the operation of the Coast Guard.

(b) An individual (or the estate of that individual) who is authorized by the Coast Guard to provide a service under a program established under subsection (a) and who is acting within the scope of that individual's duties is not liable for injury to, or loss of, property or personal injury or death that may be caused incident to providing the service.

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PART II—COAST GUARD RESERVE AND AUXILIARY

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CHAPTER 21—COAST GUARD RESERVE

Subchapter A

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§707. Temporary members of the Reserve; disability or death benefits

(a) If a temporary member of the Reserve is physically injured, or dies as a result of physical injury, and the injury is incurred incident to service while performing active duty, or engaged in authorized travel to or from that duty, the law authorizing compensation for employees of the United States suffering injuries while in the performance of their duties, applies, subject to this section. That law shall be administered by the Secretary of Labor to the same extent as if the member was a civil employee of the United States and was injured in the performance of that duty. For benefit computation, regardless of pay or pay status, the member is considered to have had monthly pay of the monthly equivalent of the minimum rate of basic pay in effect for grade GS-9 of the General Schedule on the date the injury is incurred.

(b) This section does not apply if the workmen's compensation law of a State, a territory, or another jurisdiction provides coverage because of a concurrent employment status of the temporary member. When the temporary member or a dependent is entitled to a benefit under this section and also to a concurrent benefit from the United States on account of the same disability or death, the temporary member or dependent, as appropriate, shall elect which benefit to receive.

(c) If a claim is filed under this section with the Secretary of Labor for benefits because of an alleged injury or death, the Secretary of Labor shall notify the Commandant who shall direct an investigation into the facts surrounding the alleged injury or death. The Commandant shall then certify to the Secretary of Labor whether or not the injured or deceased person was a temporary member of the Reserve, the person's military status, and whether or not the injury or death was incurred incident to military service.

(d) A temporary member of the Reserve, who incurs a physical disability or contracts sickness or disease while performing a duty to which the member has been assigned by competent authority, is entitled to the same hospital treatment afforded a member of the Regular Coast Guard.

(e) In administering section 8133 of title 5, for a person covered by this section—

(1) the percentages applicable to payments under that section are—

(A) 45 percent under subsection (a)(2) of that section, where the member died fully or currently insured under title II of the Social Security Act (42 U.S.C. 401 et seq.), with no additional payments for a child or children so long as the widow or widower remains eligible for payments under that subsection;

(B) 20 percent under subsection (a)(3) of that section, for one child, and 10 percent additional for each additional child, not to exceed a total of 75 percent, where the member died fully or currently insured under title II of the Social Security Act; and

(C) 25 percent under subsection (a)(4) of that section, if one parent was wholly dependent for support upon the deceased member at the time of the member's death and the other was not dependent to any extent; 16 percent to each if both were wholly dependent; and if one was, or both were, partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(2) payments may not be made under subsection (a)(5) of that section; and

(3) the Secretary of Labor shall inform the Secretary of Health and Human Services whenever a claim is filed and eligibility for compensation is established under subsection (a)(2) or (a)(3) of section 8133 of title 5. The Secretary of Health and Human Services shall then certify to the Secretary of Labor whether or not the member concerned was fully or currently insured under title II of the Social Security Act at the time of the member's death.

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[*Internal References.*—The catchline for Social Security Act §201 has a footnote referring to title 14.]

TITLE 18, UNITED STATES CODE

CRIMES AND CRIMINAL PROCEDURE
PART I—CRIMES

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CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

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§203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any services rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Delegate, Commissioner, officer, or employee;

shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(b) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

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§205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

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§207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of 0-9 or above as described in section 201 of title 37, United States Code; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay 0-7 or 0-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists

no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other

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appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

§208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.

§209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section

501(c)(3) of the Internal Revenue Code of 1954 and which is exempt from taxation under section 501(a) of such Code.

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CHAPTER 37—ESPIONAGE AND CENSORSHIP

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§792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

§793. Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative,

blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

§794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts[1] from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

§795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§798. Disclosure of classified information[2]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

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[1] P.L. 100-690, §7064, struck out "amount' and substituted "amounts".

[2] So enacted. See second section 798 enacted on June 30, 1953, set out below.

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

§798. Temporary extension of section 794[3]

The provisions of section 794 of this title, as amended and extended by section 1(a)(29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for.

§799. Violation of regulations of National Aeronautics and Space Administration

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

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CHAPTER 47—FRAUD AND FALSE STATEMENTS

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§1028. Fraud and related activity in connection with identification documents

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document or a false identification document;

(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States; or

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

(6) knowingly[4] possesses an identification document that is or appears to be an

[3]So enacted. See first section 798 enacted on Oct. 31, 1951, set out above.
[4]P.L. 100-690, §7023(1), inserted "knowingly".

identification document of the United States which is stolen or produced without lawful[5] authority knowing that such document was stolen or produced without such[6] authority;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) a fine of not more than $25,000 or imprisonment for not more than five years, or both, if the offense is—

(A) the production or transfer of an identification document or false identification document that is or appears to be—

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification documents; or

(C) an offense under paragraph (5) of such subsection;

(2) a fine of not more than $15,000 or imprisonment for not more than three years, or both, if the offense is—

(A) any other production or transfer of an identification document or false identification document; or

(B) an offense under paragraph (3) of such subsection; and

(3) a fine of not more than $5,000 or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that—

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.

(d) As used in this section—

(1) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(2) the term "produce" includes alter, authenticate, or assemble;

(3) the term "document-making implement" means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

(4) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification; and

(5) the term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

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CHAPTER 83—POSTAL SERVICE

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§1738. Mailing private identification documents without a disclaimer

(a) Whoever, being in the business of furnishing identification documents for valuable consideration, and in the furtherance of that business, uses the mails for the mailing, carriage in the mails, or delivery of, or causes to be transported in interstate or foreign commerce, any identification document—

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[5] P.L. 100-690, §7023(2), inserted "lawful".
[6] P.L. 100-690, §7023(3), inserted "such".

(1) which bears a birth date or age purported to be that of the person named in such identification document; and

(2) knowing that such document fails to carry diagonally printed clearly and indelibly on both the front and back "NOT A GOVERNMENT DOCUMENT" in capital letters in not less than twelve point type;

shall be fined not more than $1,000, imprisoned not more than one year, or both.

(b) For purposes of this section the term "identification document" means a document which is of a type intended or commonly accepted for the purpose of identification of individuals and which is not issued by or under the authority of a government.

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CHAPTER 105—SABOTAGE

§2151. Definitions

As used in this chapter:

The words "war material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words "war premises" include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words "war utilities" include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

The words "associate nation" mean any nation at war with any nation with which the United States is at war.

The words "national-defense material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words "national-defense premises" include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words "national-defense utilities" include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas

may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

§2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§2153. Destruction of war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2154. Production of defective war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2155. Destruction of national-defense materials, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2156. Production of defective national-defense material, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

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CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

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§2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.

§2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined not more than $1,000 or imprisoned not more than seven years, or both.

§2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

§2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.

§2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

§2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General" means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but

such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B)(3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(l) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

§2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

§2388. Activities affecting armed forces during war

(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in said subsection (a).

(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States.

§2389. Recruiting for service against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined not more than $1,000 or imprisoned not more than five years, or both.

§2390. Enlistment to serve against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined $100 or imprisoned not more than three years, or both.

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[*Internal References.*—Social Security Act §§202(u), 208(end), §1114(h), 1882(d), and §1902(a) cite title 18; and the catchlines for §§208, 1107, 1128B, and 1632 have footnotes referring to title 18.]

TITLE 22, UNITED STATES CODE

Foreign Relations and Intercourse

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CHAPTER 48—TAIWAN RELATIONS

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§3310. Employment of United States Government agency personnel

(a) Separation from Government service; reemployment or reinstatement upon termination of Institute employment; benefits

(1) Under such terms and conditions as the President may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits with[1] the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute

[1]As in original. Probably should be "which".

with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related death, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to April 10, 1979, shall receive the benefits of this section for the period of such service.

(b) Employment of aliens on Taiwan

Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Institute employees not deemed United States employees

Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18.

(d) Tax treatment of amounts paid Institute employees

(1) For purposes of sections 911 and 913 of title 26, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of title 26.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of title 26 and title II of the Social Security Act [42 U.S.C. 401 et seq.].

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[*Internal Reference.*—Social Security Act §210(a) cites title 22.]

TITLE 28, UNITED STATES CODE

JUDICIARY AND JUDICIAL PROCEDURE

PART I—ORGANIZATION OF COURTS

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CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

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§294. Assignment of retired Justices or judges to active duty

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge

and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit district or bankruptcy judge judge[1] may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit, district judge or bankruptcy judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster or senior judges. Any such retired judge of the United States may be designated and assigned by the chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit, district judge or bankruptcy judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

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CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

§371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e) Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.[2]

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PART IV—JURISDICTION AND VENUE

CHAPTER 81—SUPREME COURT

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[1] As in original. One "judge" should be stricken.
[2] P.L. 100-702, §1005(a), added subsection (e).

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§1254. Courts of appeals; certiorari;[3] certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2)[4] By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

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§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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§1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1954.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

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[3] P.L. 100-352, §2(b), struck out "appeal;".
[4] P.L. 100-352, §2(a), struck out paragraph (2) and redesignated paragraph (3) as paragraph (2).

PART V—PROCEDURE

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CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

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§2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record

is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.[5]

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 161—UNITED STATES AS PARTY GENERALLY

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§2411. Interest

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1954 upon the amount of the

[5] P.L. 100-236, §1, struck out "If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals." and substituted "If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:" and paragraphs (1) through (5).

overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

§2412. Costs and fees

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(2) For the purposes of this subsection—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;

(D) "position of the United States" means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;

(F) "court" includes the United States Claims Court;

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement; and

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(5) The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title, the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1954 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

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§2414. Payment of judgments and compromise settlements

Except as provided by the Contract Disputes Act of 1978, payment of final judgments rendered by a district court or the Court of International Trade against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of

the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

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[*Internal References.*—Social Security Act §§205(h), 209(end), 304(a) and (c), 1116(a), and 1128A(e) cite title 28.]

TITLE 29, UNITED STATES CODE[1]

LABOR

* * * * * * *

§206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;

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[*Internal Reference.*—Social Security Act §231(b) cites title 29.]

TITLE 31, UNITED STATES CODE[1]

MONEY AND FINANCE

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§1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

* * * * * * *

§3111. New issue used to buy, redeem, or refund outstanding obligations

An obligation may be issued under this chapter to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of the United States Government. Under regulations of the

[1]This title has *not* been enacted into positive law. Section 206 of this title is section 6 of the Fair Labor Standards Act of 1938 (Act of June 25, 1938).

[1]P.L. 97-258, §1, codified Title 31 of the United States Code, entitled "Money and Finance".

Secretary of the Treasury, money received from the sale of an obligation and other money in the general fund of the Treasury may be used in making the purchases, redemptions, or refunds.

* * * * * * *

§3328. Paying checks and drafts

(a) TIME LIMIT ON TREASURY CHECKS.—

(1) IN GENERAL.—Except as provided in sections 3329 and 3330 of this title—

(A) the Secretary shall not be required to pay a Treasury check issued on or after the effective date of this section unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

(B) the Secretary shall not be required to pay a Treasury check issued before the effective date of this section unless it is negotiated to a financial institution within 12 months after such effective date.

(2) DEFERRAL PENDING SETTLEMENT.—Notwithstanding the time limitations imposed by paragraph (1), if the Secretary is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Secretary may defer payment on such check until the Comptroller General settles the question.

(3) Nothing in this subsection shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.[2]

(b)(1) If a check issued by a disbursing official and drawn on a designated depositary is not paid by the last day of the fiscal year after the fiscal year in which the check was issued, the amount of the check is—

(A) withdrawn from the account with the depositary; and

(B) deposited in the Treasury for credit to a consolidated account of the Treasury.

(2) A claim for the proceeds of an unpaid check under this subsection may be paid from a consolidated account by a check drawn on the Treasury on settlement by the Comptroller General.

(c) A limitation imposed on a claim against the United States Government under section 3702 of this title does not apply to an unpaid check drawn on the Treasury or a designated depositary.

(d) With the approval of the Comptroller General, the Secretary may prescribe regulations the Secretary decides are necessary to carry out subsections (a)-(c) of this section.

(e)(1) The Secretary shall prescribe regulations on—

(A) enforcing the speedy presentation of Government drafts;

(B) paying drafts, including the place of payment; and

(C) paying drafts if presentment is not made as required.

(2) Regulations prescribed under paragraph (1) of this subsection shall prevent, as far as may be practicable, Government drafts from being used or placed in circulation as paper currency or a medium of exchange.

(f) AUTHORITY TO DECLINE PAYMENT.—Nothing in this section limits the authority of the Secretary to decline payment of a Treasury check after first examination thereof at the Treasury.[3]

§3329. Withholding checks to be sent to foreign countries

(a) The Secretary of the Treasury shall prohibit a check or warrant drawn on public money from being sent to a foreign country from the United States or from a territory or possession of the United States when the Secretary decides that postal, transportation, or banking facilities generally, or local conditions in the foreign country, do not reasonably ensure that the payee—

(1) will receive the check or warrant; and

(2) will be able to negotiate it for full value.

(b)(1) If a check or warrant is prohibited from being sent to a foreign country under subsection (a) of this section, the drawer shall hold the check or warrant until the end of the calendar quarter after the date of the check or warrant.

(2) The Secretary may release the check or warrant for delivery during the calendar quarter after the date of the check or warrant if the Secretary decides that conditions have changed to ensure reasonably that the payee—

(A) will receive the check or warrant; and

(B) will be able to negotiate it for full value.

(3) Unless the Secretary otherwise directs, the drawer shall send at the end of the calendar quarter after the date of the check or warrant the—

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[2]P.L. 100-86, §1002(1), amended subsection (a) in its entirety.
[3]P.L. 100-86, §1002(2), added subsection (f).

(A) withheld check or warrant to the drawee; and
(B) report to the Secretary on—
(i) the name and address of the payee;
(ii) the date, number, and amount of the check or warrant; and
(iii) the account on which the check or warrant was drawn.

(4) The drawee shall transfer the amount of a withheld check or warrant from the account of the drawer to the special deposit account "Secretary of the Treasury, Proceeds of Withheld Foreign Checks". The check or warrant shall be marked "Paid into Withheld Foreign Check Account". After that time, the drawee shall send all withheld checks and warrants to the Comptroller General. The Comptroller General shall credit the accounts of the drawer and drawee.

(c) The Secretary may pay an amount deposited in the special account under subsection (b)(4) of this section with a check drawn on the account when—

(1) a person claiming payment satisfies the Secretary of the right to the amount of the check or warrant (or satisfies the Administrator of Veterans' Affairs if the claim represents a payment under laws carried out by the Administrator); and

(2) the Secretary is reasonably ensured that the person—
(A) will receive the check or warrant; and
(B) will be able to negotiate it for full value.

(d) This section and section 3330 of this title—

(1) apply to a check or warrant whose delivery may be withheld under Executive Order 8389;

(2) do not affect a requirement for a license for delivering and paying a check in payment of a claim under subsection (c) of this section when a license is required by law to authorize delivery and payment; and

(3) do not affect a check or warrant issued for the payment of pay or goods bought by the United States Government in a foreign country.

* * * * * * *

§3331. Substitute checks

(a) In this section, "original check"—

(1) means an order for the payment of money—
(A) payable on demand;
(B) that does not bear interest;
(C) drawn by an authorized disbursing official or agent of the United States Government; and
(D) the amount of which is deposited with the Treasury or another account available for payment; and

(2) does not include coins and currency of the Government.

(b) When the Secretary of the Treasury is satisfied that an original check is lost, stolen, destroyed in any part, or is so defaced that the value to the owner or holder is impaired, the Secretary may issue a substitute check to the owner or holder of the original check. Except as provided in subsection (c) of this section, the substitute check is payable from the amount available to pay the original check.

(c) When the Secretary is satisfied that an original check drawn on a depositary in a foreign country or a territory or possession of the United States is lost, stolen, destroyed in part, or is so defaced that its value to the owner or holder is impaired, the drawer of the original check (or another official designated by the Secretary with the approval of the head of the agency on whose behalf the original check was issued) may issue to the owner or holder of the check a substitute check. The drawer or official shall issue the substitute check by the last day of the fiscal year after the fiscal year in which the original check was issued—

(1) using the current date; and

(2) drawn on the account of the drawer of the original check or another account available for payment of the substitute.

(d) A substitute check issued under this section—

(1) may be paid only if the original check has not been paid;

(2) shall include information necessary to identify the original check;

(3) that is drawn on the Treasury—
(A) is deemed to be an original check; and
(B) is paid under the same conditions as the original check; and

(4) does not relieve a disbursing or certifying official from liability to the Government for payment resulting from erroneously issuing the original check.

(e) Before issuing a substitute check under this section, the Secretary may require the owner or holder of the original check to agree to indemnify the Government with security in the form and amount the Secretary decides is necessary.

(f) Under conditions the Secretary may prescribe, the Secretary may delegate duties and powers of the Secretary under this section to the head of an agency. Consistent with a delegation from the Secretary under this subsection, the head of an agency may delegate those duties and powers to an officer or employee of the agency.

§3332. Checks payable to financial organizations designated by Government officers and employees

(a) In this section, "financial organization" means a bank, savings and loan association or similar institution, or a credit union chartered by the United States Government or a State.

(b) An officer or employee of an agency may designate in writing not more than 3 financial organizations to which a payment of pay of the officer or employee shall be sent without charge and the amount to be sent to each organization. The head of the agency shall authorize a disbursing official to issue a check payable to each of the organizations in the amount designated for—

(1) credit to the checking account of the officer or employee;

(2) deposit of savings for the officer or employee; or

(3) buying shares for the officer or employee.

(c) If more than one officer or employee making a designation under this section designates the same financial organization, the head of the agency may authorize a disbursing official to issue a check payable to the organization for the total amount designated by the officers and employees, accompanied by a schedule stating the amount to be credited to the account of each officer and employee.

(d) Payment by the Government by more than one check, issued under this section and properly endorsed, is complete payment of the amount due to the officer or employee requesting payment.

(e) On the written request of a person to whom payment is to be made, this section may be applied to any class of recurring payments.

(f) The Secretary of the Senate shall prescribe regulations for the Senate in carrying out this section. With the approval of the Committee on House Administration of the House of Representatives, the Clerk of the House shall prescribe regulations for the House in carrying out this section. The Secretary of the Treasury shall prescribe regulations for all other agencies in carrying out this section.

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§3343. Check forgery insurance fund

(a) The Department of the Treasury has a special deposit revolving fund, the "Check Forgery Insurance Fund". Amounts may be appropriated to the Fund. The Fund consists of amounts—

(1) appropriated to the Fund; and

(2) received under subsection (d) of this section.

(b) The Secretary of the Treasury shall pay from the Fund to a payee or special endorsee of a check drawn on the Treasury or a depositary designated by the Secretary the amount of the check without interest if—

(1) the check was lost or stolen without the fault of the payee or a holder that is a special endorsee and whose endorsement is necessary for further negotiation;

(2) the check was negotiated later and paid by the Secretary or a depositary on a forged endorsement of the payee's or special endorsee's name;

(3) the payee or special endorsee has not participated in any part of the proceeds of the negotiation or payment; and

(4) recovery from the forger, a transferee, or a party on the check after the forgery has been or may be delayed or unsuccessful.

(c) Notwithstanding section 1306 of this title, a check drawn on a designated depositary may be paid in the currency of a foreign country when the appropriate accountable official authorizes payment in that currency.

(d) The Secretary shall deposit immediately to the credit of the Fund an amount recovered from a forger or a transferee or party on the check. However, currency of a foreign country recovered because of a forged check drawn on a designated depositary shall be credited to the Fund or to the foreign currency fund that was charged when payment was made under subsection (b) of this section to the payee or special endorsee.

(e) This section does not relieve—

(1) a forger from civil or criminal liability; or

(2) a transferee or party on a check after the forgery from liability—

(A) on the express or implied warranty of prior endorsements of the transferee or party; or

(B) to refund amounts to the Secretary.

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§3521. Audits by agencies

(a) Each account of an agency shall be audited administratively before being submitted to the Comptroller General. The head of each agency shall prescribe regulations for conducting the audit and designate a place at which the audit is to be conducted. However, a disbursing official of an executive agency may not administratively audit vouchers for which the official is responsible. With the consent of the Comptroller General, the head of the agency may waive any part of an audit.

(b) The head of an agency may prescribe a statistical sampling procedure to audit vouchers of the agency when the head of the agency decides economies will result from using the procedure. The Comptroller General—

(1) may prescribe the maximum amount of a voucher that may be audited under this subsection; and

(2) in reviewing the accounting system of the agency, shall evaluate the adequacy and effectiveness of the procedure.

(c) A disbursing or certifying official acting in good faith under subsection (b) of this section is not liable for a payment or certification of a voucher not audited specifically because of the procedure prescribed under subsection (b) if the official and the head of the agency carry out diligently collection action the Comptroller General prescribes.

(d) Subsections (b) and (c) of this section do not—

(1) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(2) relieve a disbursing or certifying official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

* * * * * * *

§3526. Settlement of accounts

(a) The Comptroller General shall settle all accounts of the United States Government and supervise the recovery of all debts finally certified by the Comptroller General as due the Government.

(b) A decision of the Comptroller General under section 3529 of this title is conclusive on the Comptroller General when settling the account containing the payment.

(c)(1) The Comptroller General shall settle an account of an accountable official within 3 years after the date the Comptroller General receives the account. A copy of the certificate of settlement shall be provided the official.

(2) The settlement of an account is conclusive on the Comptroller General after 3 years after the account is received by the Comptroller General. However, an amount may be charged against the account after the 3-year period when the Government has or may have lost money because the official acted fraudulently or criminally.

(3) A 3-year period under this subsection is suspended during a war.

(4) This subsection does not prohibit—

(A) recovery of public money illegally or erroneously paid;

(B) recovery from an official of a balance due the Government under a settlement within the 3-year period; or

(C) an official from clearing an account of questioned items as prescribed by law.

(d) On settling an account of the Government, the balance certified by the Comptroller General is conclusive on the executive branch of the Government. On the initiative of the Comptroller General or on request of an individual whose accounts are settled or the head of the agency to which the account relates, the Comptroller General may change the account within a year after settlement. The decision of the Comptroller General to change the account is conclusive on the executive branch.

(e) When an amount of money is expended under law for a treaty or relations with a foreign country, the President may—

(1) authorize the amount to be accounted for each year specifically by settlement of the Comptroller General when the President decides the amount expended may be made public; or

(2) make, or have the Secretary of State make, a certificate of the amount expended if the President decides the amount is not to be accounted for specifically. The certificate is a sufficient voucher for the amount stated in the certificate.

(f) The Comptroller General shall keep all settled accounts, vouchers, certificates, and related papers until they are disposed of as prescribed by law.

(g) This subchapter does not prohibit the Comptroller General from suspending an item in an account to get additional evidence or explanations needed to settle an account.

§3527. General authority to relieve accountable officials and agents from liability

(a) Except as provided in subsection (b) of this section, the Comptroller General may relieve a present or former accountable official or agent of an agency responsible for the physical loss or deficiency of public money, vouchers, checks, securities, or records, or may authorize reimbursement from an appropriation or fund available for the activity in which the loss or deficiency occurred for the amount of the loss or deficiency paid by the official or agent as restitution, when—

(1) the head of the agency decides that—

(A) the official or agent was carrying out official duties when the loss or deficiency occurred, or the loss or deficiency occurred because of an act or failure to act by a subordinate of the official or agent; and

(B) the loss or deficiency was not the result of fault or negligence by the official or agent;

(2) the loss or deficiency was not the result of an illegal or incorrect payment; and

(3) the Comptroller General agrees with the decision of the head of the agency.

* * * * * * *

(c) On the initiative of the Comptroller General or written recommendation of the head of an agency, the Comptroller General may relieve a present or former disbursing official of the agency responsible for a deficiency in an account because of an illegal, improper, or incorrect payment, and credit the account for the deficiency, when the Comptroller General decides that the payment was not the result of bad faith or lack of reasonable care by the official. However, the Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General.

(d)(1) When the Comptroller General decides it is necessary to adjust the account of an official or agent granted relief under subsection (a) or (c) of this section, the amount of the relief shall be charged—

(A) to an appropriation specifically provided to be charged; or

(B) if no specific appropriation, to the appropriation or fund available for the expense of the accountable function when the adjustment is carried out.

(2) Subsection (c) of this section does not—

(A) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(B) relieve an accountable official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

(e) Relief provided under this section is in addition to relief provided under another law.

§3528. Responsibilities and relief from liability of certifying officials

(a) A certifying official certifying a voucher is responsible for—

(1) information stated in the certificate, voucher, and supporting records;

(2) the computation of a certified voucher under this section and section 3325 of this title;

(3) the legality of a proposed payment under the appropriation or fund involved; and

(4) repaying a payment—

(A) illegal, improper, or incorrect because of an inaccurate or misleading certificate;

(B) prohibited by law; or

(C) that does not represent a legal obligation under the appropriation or fund involved.

(b)(1) The Comptroller General may relieve a certifying official from liability when the Comptroller General decides that—

(A) the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or

(B)(i) the obligation was incurred in good faith;

(ii) no law specifically prohibited the payment; and

(iii) the United States Government received value for payment.

(2) The Comptroller General may deny relief when the Comptroller General decides the head of the agency did not carry out diligently collection action under procedures prescribed by the Comptroller General.

(c) The Comptroller General shall relieve a certifying official from liability for an overpayment—

(1) to a common carrier under section 3726 of this title when the Comptroller General decides the overpayment occurred only because the administrative audit before payment did not verify transportation rates, freight classifications, or land-grant deductions; or

(2) provided under a Government bill of lading or transportation request when the overpayment was the result of using improper transportation rates or classifications or the failure to deduct the proper amount under a land-grant law or agreement.

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§3529. Requests for decisions of the Comptroller General

(a) A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General on a question involving—

(1) a payment the disbursing official or head of the agency will make; or

(2) a voucher presented to a certifying official for certification.

(b) The Comptroller General shall issue a decision requested under this section.

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§3541. Distress warrants

(a) When an official receiving public money before it is paid to the Treasury or a disbursing or certifying official of the United States Government does not submit an account or pay the money as prescribed by law, the Comptroller General shall make the account for the official and certify to the Secretary of the Treasury the amount due the Government.

(b) The Secretary shall issue a distress warrant against the official stating the amount due from the official and any amount paid. The warrant shall be directed to the marshal of the district in which the official resides. If the Secretary intends to take and sell the property of an official that is located in a district other than where the official resides, the warrant shall be directed to the marshal of the district in which the official resides and the marshal of the district in which the property is located.

§3542. Carrying out distress warrants

(a) A marshal carrying out a distress warrant issued under section 3541 of this title shall seize the personal property of the official and sell the property after giving 10 days notice of the sale. Notice shall be given by posting an advertisement of the property to be sold in at least 2 public places in the town and county in which the property was taken or the town and county in which the owner of the property resides. If the property does not satisfy the amount due under the warrant, the official may be sent to prison until discharged by law.

(b)(1) The amount due under a warrant is a lien on the real property of the official from the date the distress warrant is issued. The lien shall be recorded in the office of the clerk of the appropriate district court until discharged under law.

(2) If the personal property of the official is not enough to satisfy a distress warrant, the marshal shall sell real property of the official after advertising the property for at least 3 weeks in at least 3 public places in the county or district where the property is located. A buyer of the real property has valid title against all persons claiming under the official.

(c) The official shall receive that part of the proceeds of a sale remaining after the distress warrant is satisfied and the reasonable costs and charges of the sale are paid.

§3543. Postponing a distress warrant proceeding

(a) A distress warrant proceeding may be postponed for a reasonable time if the Secretary of the Treasury believes the public interest will not be harmed by the postponement.

(b)(1) A person adversely affected by a distress warrant issued under section 3541 of this title may bring a civil action in a district court of the United States. The complaint shall state the kind and extent of the harm. The court may grant an injunction to stay any part of a distress warrant proceeding required by the action after the person applying for the injunction gives a bond in an amount the court prescribes for carrying out a judgment.

(2) An injunction under this subsection does not affect a lien under section 3542(b)(1) of this title. The United States Government is not required to answer in a civil action brought under this subsection.

(3) If the court dissolves the injunction on a finding that the civil action for the injunction was brought only for delay, the court may increase the interest rate imposed on amounts found due against the complainant to not more than 10 percent a year. The judge may grant or dissolve an injunction under this subsection either in or out of court.

(c) A person adversely affected by a refusal to grant an injunction or by dissolving an injunction under subsection (b) of this section may petition a judge of a circuit court of appeals in which the district is located or the Supreme Court justice allotted to that circuit by giving the judge or justice a copy of the proceeding held before the district judge. The judge or justice may grant an injunction or allow an appeal if the judge or justice finds the case requires it.

§3544. Rights and remedies of the United States Government reserved

This subchapter does not affect a right or remedy the United States Government has by law to recover a tax, debt, or demand.

§3545. Civil action to recover money

The Attorney General shall bring a civil action to recover an amount due to the United States Government on settlement of the account of a person accountable for public money when the person neglects or refuses to pay the amount to the Treasury. Any commission of that person and interest of 6 percent a year from the time the money is received by the person until repaid to the Treasury shall be added to the amount due on the account. The commission is forfeited when judgment is obtained.

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§3701. Definitions and application

(a) In this chapter—

(1) "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(2) "calendar quarter" means a 3-month period beginning on January 1, April 1, July 1, or October 1.

(3) "consumer reporting agency" means—

(A) a consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

(B) a person that, for money or on a cooperative basis, regularly—

(i) gets information on consumers to give the information to a consumer reporting agency; or

(ii) serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(4) "executive or legislative agency" means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(5) "military department" means the Departments of the Army, Navy, and Air Force.

(6) "system of records" has the same meaning given that term in section 552a(a)(5) of title 5.

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service.

(b) In subchapter II of this chapter, "claim" includes amounts owing on account of loans insured or guaranteed by the Government and other amounts due the Government.

(c) In sections 3716 and 3717 of this title, "person" does not include an agency of the United States Government, of a State government, or of a unit of general local government.

(d) Sections 3711(f) and 3716-3719 of this title do not apply to a claim or debt under, or to an amount payable under, the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States.

§3702. Authority of the Comptroller General to settle claims

(a) Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government. A claim that was not administratively examined before submission to the Comptroller General shall be examined by 2 officers or employees of the General Accounting Office independently of each other.

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the Comptroller General within 6 years after the claim accrues except—

(A) as provided in this chapter or another law; or

(B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(2) When the claim of a member of the armed forces accrues during war or within 5 years before war begins, the claim must be presented to the Comptroller General

within 5 years after peace is established or within the period provided in clause (1) of this subsection, whichever is later.

(3) The Comptroller General shall return a claim not received in the time required under this subsection with a copy of this subsection and no further communication is required.

(c) ONE-YEAR LIMIT FOR CHECK CLAIMS.—(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later.

(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.[4]

(d) The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General.

SUBCHAPTER II—CLAIMS OF THE UNITED STATES GOVERNMENT

§3711. Collection and compromise

(a) The head of an executive or legislative agency—

(1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;

(2) may compromise a claim of the Government of not more than $20,000 (excluding interest) that has not been referred to another executive or legislative agency for further collection action; and

(3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.

(b) The Comptroller General has the same authority that the head of the agency has under subsection (a) of this section when the claim is referred to the Comptroller General for further collection action. Only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official.

(c)(1) The head of an executive or legislative agency may not act under subsection (a)(2) or (3) of this section on a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.

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(d) A compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact. An accountable official is not liable for an amount paid or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this section.

(e) The head of an executive or legislative agency acts under—

(1) regulations prescribed by the head of the agency; and

(2) standards that the Attorney General and the Comptroller General may prescribe jointly.

(f)(1) When trying to collect a claim of the Government under a law except the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.), the head of an executive or legislative agency may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if—

(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency;

(B) the head of the agency has reviewed the claim and decided that the claim is valid and overdue;

(C) the head of the agency has notified the individual in writing—

(i) that payment of the claim is overdue;

(ii) that, within not less than 60 days after sending the notice, the head of the agency intends to disclose to a consumer reporting agency that the individual is responsible for the claim;

(iii) of the specific information to be disclosed to the consumer reporting agency; and

(iv) of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim;

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[4] P.L. 100-86, §1004(b), amended subsection (c) in its entirety.

(D) the individual has not—
(i) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the head of the agency has agreed to; or
(ii) filed for review of the claim under paragraph (2) of this subsection;
(E) the head of the agency has established procedures to—
(i) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;
(ii) verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed; and
(iii) get satisfactory assurances from each consumer reporting agency that the agency is complying with all laws of the United States related to providing consumer credit information; and
(F) the information disclosed to the consumer reporting agency is limited to—
(i) information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;
(ii) the amount, status, and history of the claim; and
(iii) the agency or program under which the claim arose.

(2) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection and at other times allowed by law, the head of an executive or legislative agency shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(3) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection, the head of an executive or legislative agency shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice under paragraph (1)(C).

§3712. Time limitations for presenting certain claims of the Government

(a) CLAIMS OVER FORGED OR UNAUTHORIZED ENDORSEMENTS.—

(1) PERIOD FOR CLAIMS.—If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement, the Secretary may reclaim the amount of such check from the presenting bank or any other endorser that has breached its guarantee of endorsements prior to—
(A) the end of the 1-year period beginning on the date of payment; or
(B) the expiration of the 180-day period beginning on the close of the period described in subparagraph (A) if a timely claim is received under section 3702.

(2) CIVIL ACTIONS.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce the liability of an endorser, transferor, depository, or fiscal agent on a forged or unauthorized signature or endorsement on, or a change in, a check or warrant issued by the Secretary of the Treasury, the United States Postal Service, or any disbursing official or agent not later than 1 year after a check or warrant is presented to the drawee for payment.

(B) If the United States has given an endorser written notice of a claim against the endorser within the time allowed by subparagraph (A), the 1-year period for bringing a civil action on that claim under subparagraph (A) shall be extended by 3 years.

(3) EFFECT ON AGENCY AUTHORITY.—Nothing in this subsection shall be construed to limit the authority of any agency under subchapter II of chapter 37 of this title.[5]

(b) Notwithstanding subsection (a) of this section, a civil action may be brought within 2 years after the claim is discovered when an endorser, transferor, depositary, or fiscal agent fraudulently conceals the claim from an officer or employee of the Government entitled to bring the civil action.

(c) The Comptroller General shall credit the appropriate account of the Treasury for the amount of a check or warrant for which a civil action cannot be brought because notice was not given within the time required under subsection (a) of this section if the failure to give notice was not the result of negligence of the Secretary.

(d) The Government waives all claims against a person arising from dual pay from the Government if the dual pay is not reported to the Comptroller General for collection within 6 years from the last date of a period of dual pay.

§3713. Priority of Government claims

(a)(1) A claim of the United States Government shall be paid first when—
(A) a person indebted to the Government is insolvent and—
(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

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[5]P.L. 100-86, §1004(a), amended subsection (a) in its entirety.

(ii) property of the debtor, if absent, is attached; or
(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.

§3714. Keeping money due States in default

The Secretary of the Treasury shall keep the necessary amount of money the United States Government owes a State when the State defaults in paying principal or interest on investments in stocks or bonds the State issues or guarantees and that the Government holds in trust. The money shall be used to pay the principal or interest or reimburse, with interest, money the Government advanced for interest due on the stocks or bonds.

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§3720. Collection of payments

(a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency by the use of such procedures as withdrawals and deposits by electronic transfer of funds, automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established by subsection (c).

(c) There is established in the Treasury of the United States a revolving fund to be known as the "Cash Management Improvements Fund". Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

§3720A Reduction of tax refund by amount of debt[a]

(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any OASDI overpayment and past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable; and

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he

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[a]P.L. 98-369, §2653(a)(1), added §3720A, applicable with respect to refunds payable under §6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988.
P.L. 100-203, §9402(a), amended that effective date by striking out "January" and substituting "July".

shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

(f) For purposes of this section—

(1) the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

(2) the term "past-due support" means any delinquency subject to section 464 of the Social Security Act; and

(3) the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act[7]

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§3728. Setoff against judgment

(a) The Comptroller General shall withhold paying that part of a judgment against the United States Government presented to the Comptroller General that is equal to a debt the plaintiff owes the Government.

(b) The Comptroller General shall—

(1) discharge the debt if the plaintiff agrees to the setoff and discharges a part of the judgment equal to the debt; or

(2)(A) withhold payment of an additional amount the Comptroller General decides will cover legal costs of bringing a civil action for the debt if the plaintiff denies the debt or does not agree to the setoff; and

(B) have a civil action brought if one has not already been brought.

(c) If the Government loses a civil action to recover a debt or recovers less than the amount the Comptroller General withholds under this section, the Comptroller General shall pay the plaintiff the balance and interest of 6 percent for the time the money is withheld.

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§ 3803. Hearing and determinations

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(c)(1) No allegations of liability under section 3802 of this title with respect to any claim made, presented, or submitted by any person shall be referred to a presiding officer under paragraph (2) of subsection (b) if the reviewing official determines that—

(A) an amount of money in excess of $150,000; or

(B) property or services with a value in excess of $150,000,

is requested or demanded in violation of section 3802 of this title in such claim or in a group of related claims which are submitted at the time such claim is submitted.

(2)(A) Except as provided in subparagraph (B) of this paragraph, no allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual shall be referred to a presiding officer under paragraph (2) of subsection (b).

(B) Allegations of liability against an individual under section 3802 of this title with respect to any claim or statement made, presented, or submitted, or caused to be made, presented, or submitted, by such individual relating to any benefits received by such individual may be referred to a presiding officer under paragraph (2) of subsection (b) if—

[7]As in original. No punctuation.

(i) such claim or statement is made by such individual in making application for such benefits;

(ii) such allegations relate to the eligibility of such individual to receive such benefits; and

(iii) with respect to such claim or statement, the individual—

(I) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(II) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(III) acts in reckless disregard of the truth or falsity of the claim or statement.

(C) For purposes of this subsection, the term "benefits" means—

(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(ix) benefits under the Black Lung Benefits Act;

(x) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(xi) benefits under section 336 of the Older Americans Act;

(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

(xiii) benefits under the National School Lunch Act;

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

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§3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.[a]

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§6503. Transfer and deposit requirements

(a) Consistent with program purposes and regulations of the Secretary of the Treasury, the head of an executive agency carrying out a grant program shall schedule the transfer of grant money to minimize the time elapsing between transfer of the money from the Treasury and the disbursement by a State, whether disbursement occurs before or after the transfer. A State is not accountable for interest earned on grant money pending its disbursement for program purposes.

(b) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as United States Government grant money in the accounts of the State. The head of the State agency concerned

[a] P.L. 100-496, §3(a)(1), struck out "The interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary shall publish each rate in the Federal Register." and substituted this sentence.

shall make periodic authenticated reports to the head of the appropriate executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing.

§6504. Use of existing State or multimember agency to administer grant programs

Notwithstanding a law of the United States providing that one State agency or multimember agency must be established or designated to carry out or supervise the administration of a grant program, the head of the executive agency carrying out the program may, when requested by the executive or legislative authority of the State responsible for the organizational structure of a State government—

(1) waive the one State agency or multimember agency provision on an adequate showing that the provision prevents the establishment of the most effective and efficient organizational arrangement within the State government; and

(2) approve another State administrative structure or arrangement after deciding that the objectives of the law authorizing the grant program will not be endangered by using another State structure or arrangement.

§6505. Authority to provide specialized or technical services

(a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when—

(1) written request is made by the State or local government; and

(2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.

(c) Payment received by an executive agency for providing services under this section shall be deposited to the credit of the principal appropriation from which the cost of providing the services has been paid or will be charged.

(d) The authority under this section is in addition to authority under another law in effect on October 16, 1968.

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CHAPTER 75—REQUIREMENTS FOR SINGLE AUDITS

§7501. Definitions

As used in this chapter, the term—

(1) "cognizant agency" means a Federal agency which is assigned by the Director with the responsibility for implementing the requirements of this chapter with respect to a particular State or local government.

(2) "Comptroller General" means the Comptroller General of the United States.

(3) "Director" means the Director of the Office of Management and Budget.

(4) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals.

(5) "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code.

(6) "generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(7) "generally accepted government auditing standards" means the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General.

(8) "independent auditor" means—

(A) an external State or local government auditor who meets the independence standards included in generally accepted government auditing standards, or

(B) a public accountant who meets such independence standards.

(9) "internal controls" means the plan of organization and methods and procedures adopted by management to ensure that—

(A) resource use is consistent with laws, regulations, and policies;

(B) resources are safeguarded against waste, loss, and misuse; and

(C) reliable data are obtained, maintained, and fairly disclosed in reports.

(10) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "local government" means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(12) "major Federal assistance program" means any program for which total expenditures of Federal financial assistance by the State or local government during the applicable year exceed—

(A) $20,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $7,000,000,000;

(B) $19,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $6,000,000,000 but are less than or equal to $7,000,000,000;

(C) $16,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $5,000,000,000 but are less than or equal to $6,000,000,000;

(D) $13,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $4,000,000,000 but are less than or equal to $5,000,000,000;

(E) $10,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $3,000,000,000 but are less than or equal to $4,000,000,000;

(F) $7,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $2,000,000,000 but are less than or equal to $3,000,000,000;

(G) $4,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $1,000,000,000 but are less than or equal to $2,000,000,000;

(H) $3,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $100,000,000 but are less than or equal to $1,000,000,000; and

(I) the larger of (i) $300,000, or (ii) 3 percent of such total expenditures for all programs, in the case of a State or local government for which such total expenditures for all programs exceed $100,000 but are less than or equal to $100,000,000.

(13) "public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(14) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe.

(15) "subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that receives such assistance.

§7502. Audit requirements; exemptions

(a)(1)(A) Each State and local government which receives a total amount of Federal financial assistance equal to or in excess of $100,000 in any fiscal year of such government shall have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title.

(B) Each State and local government that receives a total amount of Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 in any fiscal year of such government shall—

(i) have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title; or

(ii) comply with any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

(C) Each State and local government that receives a total amount of Federal financial assistance which is less than $25,000 in any fiscal year of such government shall be exempt for such fiscal year from compliance with—

(i) the audit requirements of this chapter; and

(ii) any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

The provisions of clause (ii) of this subparagraph do not exempt a State or local government from compliance with any provision of a Federal statute or regulation that requires such government to maintain records concerning Federal financial assistance provided to such government or that permits a Federal agency or the Comptroller General access to such records.

(2) For purposes of this section, a State or local government shall be considered to receive Federal financial assistance whether such assistance is received directly from a Federal agency or indirectly through another State or local government.

(b)(1) Except as provided in paragraphs (2) and (3), audits conducted pursuant to this chapter shall be conducted annually.

(2) If a State or local government is required—

(A) by constitution or statute, as in effect on the date of enactment of this chapter, or

(B) by administrative rules, regulations, guidelines, standards, or policies, as in effect on such date,

to conduct its audits less frequently than annually, the cognizant agency for such government shall, upon request of such government, permit the government to conduct its audits pursuant to this chapter biennially, except as provided in paragraph (3). Such audits shall cover both years within the biennial period.

(3) Any State or local government that is permitted, under clause (B) of paragraph (2), to conduct its audits pursuant to this chapter biennially by reason of the requirements of a rule, regulation, guideline, standard, or policy, shall, for any of its fiscal years beginning after December 31, 1986, conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes by January 1, 1987. Audits conducted biennially under the provisions of this paragraph shall cover both years within the biennial period.

(c) Each audit conducted pursuant to subsection (a) shall be conducted by an independent auditor in accordance with generally accepted government auditing standards, except that, for the purposes of this chapter, such standards shall not be construed to require economy and efficiency audits, program results audits, or program evaluations.

(d)(1) Each audit conducted pursuant to subsection (a) for any fiscal year shall cover the entire State or local government's operations except that, at the option of such government—

(A) such audit may, except as provided in paragraph (5), cover only each department, agency, or establishment which received, expended, or otherwise administered Federal financial assistance during such fiscal year; and

(B) such audit may exclude public hospitals and public colleges and universities.

(2) Each such audit shall encompass the entirety of the financial operations of such government or of such department, agency, or establishment, whichever is applicable, and shall determine and report whether—

(A)(i) the financial statements of the government, department, agency, or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles; and

(ii) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon the financial statements;

(B) the government, department, agency, or establishment has internal control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(C) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

In complying with the requirements of subparagraph (C), the independent auditor shall select and test a representative number of transactions from each major Federal assistance program.

(3) Transactions selected from Federal assistance programs, other than major Federal assistance programs, pursuant to the requirements of paragraphs (2)(A) and (2)(B) shall be tested for compliance with Federal laws and regulations that apply to such transactions. Any noncompliance found in such transactions by the independent auditor in making determinations required by this paragraph shall be reported.

(4) The number of transactions selected and tested under paragraphs (2) and (3), the selection and testing of such transactions, and the determinations required by such paragraphs shall be based on the professional judgment of the independent auditor.

(5) Each State or local government which, in any fiscal year of such government, receives directly from the Department of the Treasury a total of $25,000 or more under chapter 67 of this title (relating to general revenue sharing) and which is required to conduct an audit pursuant to this chapter for such fiscal year shall not have the option provided by paragraph (1)(A) for such fiscal year.

(6) A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered to be an audit for the purpose of this chapter.

(e)(1) Each State and local government subject to the audit requirements of this chapter, which receives Federal financial assistance and provides $25,000 or more of such assistance in any fiscal year to a subrecipient, shall—

(A) if the subrecipient conducts an audit in accordance with the requirements of this chapter, review such audit and ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government; or

(B) if the subrecipient does not conduct an audit in accordance with the requirements of this chapter—

(i) determine whether the expenditures of Federal financial assistance provided to the subrecipient by the State or local government are in accordance with applicable laws and regulations; and

(ii) ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government.

(2) Each such State and local government shall require each subrecipient of Federal assistance through such government to permit, as a condition of receiving funds from such assistance, the independent auditor of the State or local government to have such access to the subrecipient's records and financial statements as may be necessary for the State or local government to comply with this chapter.

(f) The report made on any audit conducted pursuant to this section shall, within thirty days after completion of such report, be transmitted to the appropriate Federal officials and made available by the State or local government for public inspection.

(g) If an audit conducted pursuant to this section finds any material noncompliance with applicable laws and regulations by, or material weakness in the internal controls of, the State or local government with respect to the matters described in subsection (d)(2), the State or local government shall submit to appropriate Federal officials a plan for corrective action to eliminate such material noncompliance or weakness or a statement describing the reasons that corrective action is not necessary. Such plan shall be consistent with the audit resolution standard promulgated by the Comptroller General (as part of the standards for internal controls in the Federal Government) pursuant to section 3512(b) of this title.

§7503. Relation to other audit requirements

(a) An audit conducted in accordance with this chapter shall be in lieu of any financial or financial and compliance audit of an individual Federal assistance program which a State or local government is required to conduct under any other Federal law or regulation. To the extend* that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal law or regulation, a Federal agency shall rely upon and use that information and plan and conduct its own audits accordingly in order to avoid a duplication of effort.

(b) Notwithstanding subsection (a), a Federal agency shall conduct any additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, such agency from carrying out such additional audits.

(c) The provisions of this chapter do not limit the authority of Federal agencies to conduct, or enter into contracts for the conduct of, audits and evaluations of Federal financial assistance programs, nor limit the authority of any Federal agency Inspector General or other Federal audit official.

(d) Subsection (a) shall apply to a State or local government which conducts an audit in accordance with this chapter even though it is not required by section 7502(a) to conduct such audit.

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*As in original. Possibly should be "extent".

(e) A Federal agency that performs or contracts for audits in addition to the audits conducted by recipients pursuant to this chapter shall, consistent with other applicable law, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§7504. Cognizant agency responsibilities

(a) The Director shall designate cognizant agencies for audits conducted pursuant to this chapter.

(b) A cognizant agency shall—

(1) ensure that audits are made in a timely manner and in accordance with the requirements of this chapter;

(2) ensure that the audit reports and corrective action plans made pursuant to section 7502 of this title are transmitted to the appropriate Federal officials; and

(3)(A) coordinate, to the extent practicable, audits done by or under contract with Federal agencies that are in addition to the audits conducted pursuant to this chapter; and (B) ensure that such additional audits build upon the audits conducted pursuant to this chapter.

§7505. Regulations

(a) The Director, after consultation with the Comptroller General and appropriate Federal, State, and local government officials, shall prescribe policies, procedures, and guidelines to implement this chapter. Each Federal agency shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such policies, procedures, and guidelines.

(b)(1) The policies, procedures, and guidelines prescribed pursuant to subsection (a) shall include criteria for determining the appropriate charges to programs of Federal financial assistance for the cost of audits. Such criteria shall prohibit a State or local government which is required to conduct an audit pursuant to this chapter from charging to any such program (A) the cost of any financial or financial and compliance audit which is not conducted in accordance with this chapter, and (B) more than a reasonably proportionate share of the cost of any such audit that is conducted in accordance with this chapter.

(2) The criteria prescribed pursuant to paragraph (1) shall not, in the absence of documentation demonstrating a higher actual cost, permit (A) the ratio of (i) the total charges by a government to Federal financial assistance programs for the cost of audits performed pursuant to this chapter, to (ii) the total cost of such audits, to exceed (B) the ratio of (i) total Federal financial assistance expended by such government during the applicable fiscal year or years, to (ii) such government's total expenditures during such fiscal year or years.

(c) Such policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals will have the opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter.

§7506. Monitoring responsibilities of the Comptroller General

The Comptroller General shall review provisions requiring financial or financial and compliance audits of recipients of Federal assistance that are contained in bills and resolutions reported by the committees of the Senate and the House of Representatives. If the Comptroller General determines that a bill or resolution contains provisions that are inconsistent with the requirements of this chapter, the Comptroller General shall, at the earliest practicable date, notify in writing—

(1) the committee that reported such bill or resolution; and

(2)(A) the Committee on Governmental Affairs of the Senate (in the case of a bill or resolution reported by a committee of the Senate); or

(B) the Committee on Government Operations of the House of Representatives (in the case of a bill or resolution reported by a committee of the House of Representatives).

§7507. Effective date; report

(a) This chapter shall apply to any State or local government with respect to any of its fiscal years which begin after December 31, 1984.

(b) The Director, on or before May 1, 1987, and annually thereafter, shall submit to each House of Congress a report on operations under this chapter. Each such report shall specifically identify each Federal agency or State or local government which is failing to comply with this chapter.

* * * * * * *

§9309. Priority of sureties

When a person required to provide a surety bond given to the United States Government is insolvent or dies having assets insufficient to pay debts, the surety, or the executor, administrator, or assignee of the surety paying the Government the amount due under the bond—

(1) has the same priority to amounts from the assets and estate of the person as are secured for the Government; and

(2) personally may bring a civil action under the bond to recover amounts paid under the bond.

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§9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

§9702. Investment of trust funds

Except as required by a treaty of the United States, amounts held in trust by the United States Government (including annual interest earned on the amounts)—

(1) shall be invested in Government obligations; and

(2) shall earn interest at an annual rate of at least 5 percent.

[*Internal References.*—Social Security Act §§201(d), 482(f), 503(a), 506(d), 904(b), 1816(c), 1817(c), 1841(c), 1842(c), 1892(c), 2002(b), and 2006(d) cite title 31; and Social Security Act titles I, II, IV, VII, IX, X, XIV, XVI (State), XVI (SSI), XVIII, XIX, and XX and §§202(t), 402(a), 454(6) and (14), 1612(b) 1613(a), 1816(h), and 1902(a) have footnotes referring to title 31.]

TITLE 32, UNITED STATES CODE

NATIONAL GUARD

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CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

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§709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in—

(1) the administration and training of the National Guard; and

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.

(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(5) a right of appeal which may exist with respect to clause (1), (2), (3), or (4) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

(f) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to any person employed under this section.

(g)(1) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5.

(2) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) In no event shall the number of technicians employed under this section at any one time exceed 53,100.

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[*Internal Reference.*—Social Security Act §218(b) cites title 32.]

TITLE 37, UNITED STATES CODE

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

CHAPTER 1—DEFINITIONS

§101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:[1]

* * * * * * *

(3) The term[2] "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.[3]

* * * * * * *

(5) The term[4] "Secretary[5] concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy;

(E) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(F) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.[6]

* * * * * * *

CHAPTER 3—BASIC PAY

§201. Pay grades: assignment to; general rules

(a) For the purpose of computing their basic pay, commissioned officers of the uniformed services (other than commissioned warrant officers) are assigned by the grade or rank in which serving to the following pay grades:

Pay grade	Army, Air Force, and Marine Corps	Navy, Coast Guard, and National Oceanic and Atmospheric Administration	Public Health Service
0-10	General	Admiral	
0-9	Lieutenant general.	Vice admiral	Surgeon General.
0-8	Major general	Rear admiral	Deputy Surgeon General. Assistant Surgeon General having rank of major general.
0-7	Brigadier general	Rear admiral (lower half)	Assistant Surgeon General having rank of brigadier general.
0-6	Colonel	Captain	Director grade.
0-5	Lieutenant colonel.	Commander	Senior grade.
0-4	Major	Lieutenant commander	Full grade.
0-3	Captain	Lieutenant	Senior assistant grade.
0-2	1st lieutenant	Lieutenant (junior grade)	Assistant grade.
0-1	2d lieutenant	Ensign	Junior assistant grade.

(b) For the purpose of computing their basic pay, warrant officers of the armed forces are assigned, by the warrant officer grade in which serving, to the following pay grades:

Pay Grade	Warrant Officer Grade
W-4	Chief Warrant Officer, W-4
W-3	Chief Warrant Officer, W-3
W-2	Chief Warrant Officer, W-2
W-1	Warrant Officer, W-1

[1] P.L. 100-26, §8(e)(1)(A), struck out "for the purposes of this title—" and substituted "the following definitions apply in this title:".
[2] P.L. 100-26, §8(e)(1)(B), inserted "The term".
[3] P.L. 100-26, §8(e)(1)(D), struck out a semicolon and substituted a period.
[4] See footnote 2.
[5] P.L. 100-26, §8(e)(1)(C), struck out "Secretary" and substituted "secretary".
P.L. 100-456, §1233(f)(2), struck out "secretary" and substituted "Secretary".
[6] See footnote 3.

(c) An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to monthly basic pay at the rate of 50 percent of the basic pay of a commissioned officer in pay grade 0-1 with two or less years of service computed under section 205 of this title.

(d) Unless he is entitled to the basic pay of a higher pay grade, an aviation pilot of the Naval Reserve, Marine Corps Reserve, or Coast Guard Reserve is entitled to monthly basic pay at the rate prescribed for pay grade E-5.

(e) Except as provided by subsections (c) and (d) of this section, enlisted members of the uniformed services shall, for the purpose of computing their basic pay, be distributed by the Secretary concerned in the various enlisted pay grades set forth in section 203 of this title. However, except as provided by section 307 of this title, an enlisted member may not be placed in pay grade E-8 or E-9 until he has completed at least 8 years or 10 years, respectively, of enlisted service computed under section 205 of this title.

* * * * * * *

§203. Rates

(a) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

(b) While serving as a permanent professor at the United States Military Academy or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of $250 a month. This additional pay may not be used in the computation of retired pay.

(c)(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the rate of $525[7].

(2) The rate of monthly cadet pay, or midshipman pay, under this subsection shall be adjusted in the manner and at the time the monthly basic pay of members of the uniformed services is adjusted under section 1009 of this title.

(d) The basic pay of a commissioned officer who is in pay grade 0-1, 0-2, or 0-3 and who is credited with a total of over four years' active service as a warrant officer or as a warrant officer and enlisted member shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

§204. Entitlement

(a) The following persons are entitled to the basic pay of the pay grade to which assigned or distributed, in accordance with their years of service computed under section 205 of this title—

(1) a member of a uniformed service who is on active duty; and

(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 3021, 3496, 3541, 8021, 8496, or 8541 of title 10, or section 503, 504, 505, or 506 of title 32.

(b) For the purposes of subsection (a) of this section, under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty.

(c) A member of the National Guard who is called into Federal service for a period of 30 days or less is entitled to basic pay from the date when he appears at the place of company rendezvous. However, this subsection does not authorize any expenditure before arriving at the place of rendezvous that is not authorized by law to be paid after arrival at that place.

(d) Full-time training, training duty with pay, or other full-time duty performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, is active duty for the purposes of this section.

(e) A payment accruing under any law to a member of a uniformed service incident to his release from active duty or for his return home incident to that release may be

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[7] P.L. 100-180, §601(d), struck out "$494.40" and substituted "$509.10".
P.L. 100-180, §601(c) [as amended by P.L. 100-202, §110(b)], struck out "$494.40" and substituted "$504.30".
P.L. 100-456, §601(d), struck out "$504.30" and substituted "$525".

paid to him before his departure from his last duty station, whether or not he actually performs the travel involved. If a member receives a payment under this subsection but dies before that payment would have been made but for this subsection, no part of that payment may be recovered by the United States.

(f) A cadet of the United States Military Academy or the United States Air Force Academy, or a midshipman of the United States Naval Academy, who, upon graduation from one of those academies, is appointed as a second lieutenant of the Army or the Air Force is entitled to the basic pay of pay grade 0-1 beginning upon the date of his graduation.

(g)(1) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service); or

(C) while traveling directly to or from such duty or training.

(2) In the case of a member who receives earned income from nonmilitary employment or self-employment performed in any month in which the member is otherwise entitled to pay and allowances under paragraph (1), the total pay and allowances shall be reduced by the amount of such income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.[8]

(h)(1) A member of a reserve component of a uniformed service who is physically able to perform his military duties, is entitled, upon request, to a portion of the monthly pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for each month for which the member demonstrates a loss of earned income from nonmilitary employment or self-employment as a result of an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing active duty;

(B) in line of duty while performing inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance in an inactive status at an educational institution under the sponsorship of an armed force or the Public Health Service); or

(C) while traveling directly to or from such duty or training.

(2) The monthly entitlement may not exceed the member's demonstrated loss of earned income from nonmilitary or self-employment. In calculating such loss of income, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.[9]

(i)(1) The total amount of pay and allowances paid under subsections (g) and (h) and compensation paid under section 206(a) of this title for any period may not exceed the amount of pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service for that period.

(2) Pay and allowances may not be paid under subsection (g) or (h) for a period of more than six months. The Secretary concerned may extend such period in any case if the Secretary determines that it is in the interests of fairness and equity to do so.

(3) A member is not entitled to benefits under subsection (g) or (h) if the injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member.

(4) Regulations with respect to procedures for paying pay and allowances under subsections (g) and (h) shall be prescribed—

(A) by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary; and

(B) by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service in the Navy.[10]

(j)[11] A member of the uniformed services who is entitled to medical or dental care under section 1074a of title 10 is entitled to travel and transportation allowances, or a monetary allowance in place thereof, for necessary travel incident to such care, and return to his home upon discharge from treatment.

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[8] P.L. 100-456, §631(a), amended subsection (g) in its entirety.
[9] P.L. 100-456, §631(a), amended subsection (h) in its entirety.
[10] P.L. 100-456. §631(b), added this subsection (i).
[11] P.L. 100-456, §631(b), redesignated subsection (i) as subsection (j).

§205. Computation: service creditable

(a) Subject to subsections (b) and (c) of this section, for the purpose of computing the basic pay of a member of a uniformed service, his years of service are computed by adding—

(1) all periods of active service as an officer, Army field clerk, flight officer, aviation midshipman, or enlisted member of a uniformed service;

(2) all periods during which he was enlisted or held an appointment as an officer, Army field clerk, or flight officer of—

(A) a regular component of a uniformed service;
(B) the Regular Army Reserve;
(C) the Organized Militia before July 1, 1916;
(D) the National Guard;
(E) the National Guard Reserve;
(F) a reserve component of a uniformed service;
(G) the Naval Militia;
(H) the National Naval Volunteers;
(I) the Naval Reserve Force;
(J) the Army without specification of component;
(K) the Air Force without specification of component;
(L) the Marine Corps Reserve Force;
(M) the Philippine Scouts; or
(N) the Phillippine Constabulary;

(3) for a commissioned officer in service on June 30, 1922, all service that was then counted in computing longevity pay and all service as a contract surgeon serving full time;

(4) all periods during which he held an appointment as a nurse, reserve nurse, or commissioned officer in the Army Nurse Corps as it existed at any time before April 16, 1947, the Navy Nurse Corps as it existed at any time before April 16, 1947, or the Public Health Service, or a reserve component of any of them;

(5) all periods during which he was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration;

(6) all periods that, under law in effect on January 10, 1962, were authorized to be credited in computing basic pay; and

(7) all periods while—

(A) on a temporary disability retired list, honorary retired list, or a retired list of a uniformed service;

(B) entitled to retired pay, retirement pay, or retainer pay, from a uniformed service or the Veterans' Administration, as a member of the Fleet Reserve or the Fleet Marine Corps Reserve; or

(C) a member of the Honorary Reserve of the Officers' Reserve Corps or the Organized Reserve Corps.

Except for any period of active service described in clause (1) of this subsection and except as provided by subsections (b), (c), and (d) of section 1402 and subsections (b), (c), and (d) of section 1402a of title 10, a period of service described in clauses (2) through (7) of this subsection that is performed while on a retired list, in a retired status, or in the Fleet Reserve or Fleet Marine Corps Reserve, may not be included to increase retired pay, retirement pay, or retainer pay. For the purpose of clause (5) of this subsection, periods during which a member was a deck officer or junior engineer in the National Oceanic and Atmospheric Administration includes periods during which a member was a deck officer or junior engineer in the Environmental Science Services Administration or the Coast and Geodetic Survey.

(b) A period of time may not be counted more than once under subsection (a) of this section.

(c) The periods of service authorized to be counted under subsection (a) of this section shall, under regulations prescribed by the Secretary concerned, include service performed by a member of a uniformed service before he became 18 years of age.

(d) Notwithstanding subsection (a), a commissioned officer may not count in computing his basic pay any period of service after October 13, 1964, that he performed concurrently as a member of a uniformed service and as a member of the Senior Reserve Officers' Training Corps.

(e) Notwithstanding subsection (a) of this section, a period served by a member of a uniformed service in a reserve component under an enlistment under section 511 of title 10 before the member—

(1) begins service on active duty under subsection (b) of that section, or

(2) begins an initial period of active duty for training under subsection (d) of that section,

may not be counted under this section.

§206. Reserves; members of National Guard: inactive-duty training

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty[12]; or

(ii) inactive-duty training; or

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member).

(b) The regulations prescribed under subsection (a) of this section for each uniformed service, the National Guard, and each of the classes of organization of the reserve components within each uniformed service, may be different. The Secretary concerned shall, for the National Guard and each of the classes of organization within each uniformed service, prescribe—

(1) minimum standards that must be met before an assembly for drill or other equivalent period of training, instruction, duty, or appropriate duties may be credited for pay purposes, and those standards may require the presence for duty of officers and enlisted members in numbers equal to or more than a minimum number or percentage of the unit strength for a specified period of time with participation in a prescribed kind of training;

(2) the maximum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties, that may be counted for pay purposes in each fiscal year or in lesser periods of time; and

(3) the minimum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties that must be completed in stated periods of time before the members of units or organizations can qualify for pay.

(c) A person enlisted in the inactive National Guard is not entitled to pay under this section.

(d) This section does not authorize compensation for work or study performed by a member of a reserve component in connection with correspondence courses of an armed force.

(e) A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the member's regular period of instruction or regular period of appropriate duty during that fiscal year.

* * * * * * *

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

§701. Members of Army, Navy, Air Force, and Marine Corps; contract surgeons

(a) Under regulations prescribed by the Secretary of the military department concerned, a commissioned officer of the Army, Navy, Air Force, or Marine Corps may transfer or assign his pay account, when due and payable.

(b) A contract surgeon, or contract dental surgeon, of the Army, Navy, or Air Force, on duty in Alaska, Hawaii, the Philippine Islands, or Puerto Rico, may transfer or assign his pay account, when due and payable, under the regulations prescribed under section[13] (a) of this section.

(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.

(d) The Secretary of the military department concerned, may allow a—

(1) member of the Army, Navy, Air Force, or Marine Corps; or

(2) contract surgeon of the Army, Navy, or Air Force;

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[12]P.L. 100-456, §631(c), struck out "for a period of 30 days or less".
[13]As in original. Should be "subsection".

to make allotments from his pay for the support of his relatives, or for any other purpose that the Secretary concerned considers proper. If an allotment made under this subsection is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned, from the officer who failed to make the report.

[§702. Repealed.[14]]

§703. Allotments: members of Coast Guard

Members of the Coast Guard may, under regulations prescribed by the Secretary of Transportation, make allotments from their pay and allowances.

§704. Allotments: officers of Public Health Service

Commissioned officers of the Public Health Service who are on active duty may, under regulations prescribed by the President, make allotments from their pay.

[§705. Repealed.[15]]

§706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration

Under regulations prescribed by the Secretary of Commerce, commissioned officers of the National Oceanic and Atmospheric Administration may make allotments or assignments of their pay.

* * * * * * *

§1009. Adjustments of compensation

(a) Whenever the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5 is adjusted upward, the President shall immediately make an upward adjustment in the—

(1) monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(2) basic allowance for subsistence authorized enlisted members and officers by section 402 of this title; and

(3) basic allowance for quarters authorized members of the uniformed services by section 403(a) of this title.

(b) An adjustment under this section shall have the force and effect of law and shall—

(1) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees;

(2) be based on the rates of the various elements of compensation as defined in, or made under, section 402 or 403 of this title or this section; and

(3) subject to subsections (c) and (d) of this section, provide all eligible members with an increase in each element of compensation, set forth in subsection (a) of this section, which is of the same percentage as the overall average percentage increase in the General Schedule rates of basic pay for civilian employees.

(c)(1) Whenever the President determines such action to be in the best interest of the Government, he is authorized to allocate the overall average percentage of any increase described in subsection (b)(3) of this section among the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis; however, the amount allocated to the element of monthly basic pay may not be less than 75 percent of the amount that would have been allocated to the element of basic pay under subsection (b)(3) of this section.

(2) Under regulations prescribed by the President, whenever the President exercises his authority under paragraph (1) of this subsection to allocate the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403(b) or (c) of this title, is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under paragraph (1) of this subsection in the amount of the basic allowance for quarters which, but for section 403(b) or (c) of this title, such member would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) of this section if the President had not exercised such authority.

(d)(1) Subject to paragraph (2) of this subsection, whenever the President determines such action to be in the best interest of the Government, he may allocate the overall

[14] P.L. 99-145, §683(b)(1); 99 Stat. 665.
[15] P.L. 99-145, §683(b)(1); 99 Stat. 665.

percentage increase in the element of basic pay that would otherwise be effective after any allocation made under subsection (c) of this section among such pay grade and years-of-service categories as he considers appropriate.

(2) In making any allocation of an overall percentage increase in basic pay under paragraph (2) of this subsection—

(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection or under subsection (c) of this section (or under both such subsections) may not be less than 75 percent of the amount of the increase in the element of basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (b)(3) of this section; and

(B) the overall percentage increase in the elements of compensation specified in subsection (a) of this section in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

(e) Whenever the President plans to exercise his authority under subsection (c) or (d) of this section with respect to any anticipated increase in the compensation of members of the uniformed services, he shall advise the Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

(f) The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title, and a full report shall be made to the Congress summarizing the objectives and results of those allocations.

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[*Internal References.*—Social Security Act §§209(end) and 465(a) and (c) cite title 37.]

EXECUTIVE ORDER NO. 12663
Federal Register, January 10, 1989 [54 FR 791]

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I—MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	COMMISSIONED OFFICERS						
	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
0-10**	$5710.80	$5911.80	$5911.80	$5911.80	$5911.80	$6138.30	$6138.30
0-9.....	5061.30	5193.90	5304.30	5304.30	5304.30	5439.30	5439.30
0-8.....	4584.30	4721.40	4833.60	4833.60	4833.60	5193.90	5193.90
0-7.....	3809.10	4068.00	4068.00	4068.00	4250.40	4250.40	4496.70
0-6.....	2823.30	3102.00	3305.10	3305.10	3305.10	3305.10	3305.10
0-5.....	2257.80	2651.40	2834.70	2834.70	2834.70	2834.70	2920.50
0-4.....	1903.50	2317.80	2472.30	2472.30	2518.20	2629.20	2808.60
0-3***	1768.80	1977.60	2114.10	2339.10	2451.00	2538.90	2676.30
0-2***	1542.30	1684.50	2023.50	2091.60	2135.40	2135.40	2135.40
0-1***	1338.90	1394.10	1684.50	1684.50	1684.50	1684.50	1684.50

Pay Grade	COMMISSIONED OFFICERS						
	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-10**	$6478.80*	$6478.80*	$6875.10*	$6875.10*	$7115.10*	$7115.10*	$7558.50*
0-9.....	5665.80	5665.80	6138.30	6138.30	6478.80*	6478.80*	6875.10*
0-8.....	5439.30	5439.30	5665.80	5911.80	6138.30	6289.50	6289.50
0-7.....	4496.70	4721.40	5193.90	5551.20	5551.20	5551.20	5551.20
0-6.....	3305.10	3417.30	3957.60	4159.80	4250.40	4496.70	4877.10
0-5.....	3077.40	3283.80	3529.50	3732.00	3845.10	3979.20	3979.20
0-4.....	2966.40	3102.00	3237.90	3327.60	3327.60	3327.60	3327.60
0-3***	2808.60	2877.90	2877.90	2877.90	2877.90	2877.90	2877.90
0-2***	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40

COMMISSIONED OFFICERS

Pay Grade	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-1***	*1684.50*	*1684.50*	*1684.50*	*1684.50*	*1684.50*	1684.50	1684.50

*Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $6,291.60 per month.

**While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

***Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
0-3.....	——	——	——	$2339.10	$2451.00	$2538.90	$2676.30
0-2.....	——	——	——	2091.60	2135.40	2202.90	2317.80
0-1.....	——	——	——	1684.50	1799.40	1865.70	1933.20

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
0-3***	$2808.60	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50
0-2.....	2406.30	2472.30	2472.30	2472.30	2472.30	2472.30	2472.30
0-1.....	2000.70	2091.60	2091.60	2091.60	2091.60	2091.60	2091.60

WARRANT OFFICERS

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
W-4....	$1802.10	$1933.20	$1933.20	$1977.60	$2067.30	$2158.50	$2249.10
W-3....	1637.70	1776.60	1776.60	1799.40	1820.40	1953.60	2067.30
W-2....	1434.30	1551.90	1551.90	1597.20	1684.50	1776.60	1844.10
W-1....	1195.20	1370.40	1370.40	1484.70	1551.90	1618.80	1684.50

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
W-4....	$2406.30	$2518.20	$2606.40	$2676.30	$2762.70	$2855.10	$3077.40
W-3....	2135.40	2202.90	2268.60	2339.10	2430.00	2518.20	2606.40
W-2....	1911.60	1977.60	2046.90	2114.10	2180.70	2268.60	2268.60
W-1....	1754.10	1820.40	1888.20	1953.60	2023.50	2023.50	2023.50

ENLISTED MEMBERS

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10
E-9*							$2096.10
E-8.....						$1758.00	1808.10
E-7.....	$1227.30	$1324.80	$1374.00	$1422.00	$1470.60	1517.40	1566.00
E-6.....	1056.00	1150.80	1198.80	1249.80	1296.30	1343.40	1392.90
E-5.....	926.70	1008.60	1057.50	1103.70	1176.00	1224.00	1272.60
E-4.....	864.30	912.60	966.30	1041.30	1082.40	1082.40	1082.40
E-3.....	814.20	858.90	893.40	928.80	928.80	928.80	928.80
E-2.....	783.60	783.60	783.60	783.60	783.60	783.60	783.60
E-1**	699.00	699.00	699.00	699.00	699.00	699.00	699.00
E-1*** ..	646.20	646.20	646.20	646.20	646.20	646.20	646.20

	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E-9*	$2153.50	$2192.10	$2242.20	$2292.30	$2337.00	$2459.70	$2698.80
E-8.....	1855.80	1904.10	1954.20	1999.20	2048.40	2168.70	2410.20
E-7.....	1614.60	1687.80	1735.80	1784.10	1807.20	1928.70	2168.70
E-6.....	1464.60	1510.50	1559.40	1583.10	1583.10	1583.10	1583.10
E-5.....	1319.40	1343.40	1343.40	1343.40	1343.40	1343.40	1343.40
E-4.....	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40

ENLISTED MEMBERS

Pay Grade	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
E-3.....	928.80	928.80	928.80	928.80	928.80	928.80	928.80
E-2.....	783.60	783.60	783.60	783.60	783.60	783.60	783.60
E-1**....	699.00	699.00	699.00	699.00	699.00	699.00	699.00
E-1***..	646.20	646.20	646.20	646.20	646.20	646.20	646.20

*While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,280.50 regardless of cumulative years of service computed under 37 U.S.C. 205.
**Applies to personnel who have served 4 months or more on active duty.
***Applies to personnel who have served less than 4 months on active duty.

TITLE 38—UNITED STATES CODE[1]

VETERANS' BENEFITS

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[1]This title was enacted by P.L. 85-857, approved September 2, 1958; 72 Stat. 1105. See P.L. 95-202, §401, with respect to Women's Air Forces Service Pilots, in Vol. II, p. 685.
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CHAPTER 1—GENERAL

§101. Definitions

For the purposes of this title—

* * * * * * *

(21) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (a) while on transfer to one of the Armed Forces, or (b) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate

military hazard, or (c) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means—

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of[3] training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned[4]; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;[5]

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and[6]

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.[7]

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

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(27) The term "reserve component" means, with respect to the Armed Forces—

(A) the Army Reserve;

(B) the Naval Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

(E) the Coast Guard Reserve;

(F) the Army National Guard of the United States; and

(G) the Air National Guard of the United States.

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CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

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§603. Contracts for hospital care and medical services in non-Veterans' Administration facilities

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[3]P.L. 100-456, §633(c)(1)(A), struck out "field".

[4]P.L. 100-456, §633(c)(1)(B), inserted "for a period of not less than four weeks and which must be completed by the member before the member is commissioned".

[5]P.L. 100-456, §633(c)(2)(A), struck out "and".

[6]P.L. 100-456, §633(c)(2)(B), struck out the period and substituted "; and".

[7]P.L. 100-456, §633(c)(2)(C), added clause (C).

(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish any of the following:[8]

(1) Hospital[9] care or medical services to a veteran for the treatment of—

(A) a service-connected disability; or

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service.[10]

(2) Medical[11] services for the treatment of any disability of—

(A) a veteran described in section 612(a)(1)(B) of this title;

(B) a veteran described in section[12] paragraph (2), (3), or (4) of section 612(a)[13] of this title, for a purpose described in section 612(a)(5)(B)[14] of this title; or

(C) a veteran described in section 612(a)(3) (other than a veteran who is a former prisoner of war)[15] of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities.[16]

(3) Hospital[17] care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Veterans' Administration facility or nursing home care under section 620 of this title[18] until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility.[19]

(4) Hospital[20] care for women veterans.[21]

(5) Hospital[22] care, or medical services that will obviate the need for hospital admission, for veterans in a State (other than the Commonwealth of Puerto Rico) not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and non-Veterans' Administration facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Veterans' Administration within the 48 contiguous States and the Commonwealth of Puerto Rico.[23]

(6) Diagnostic[24] services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Veterans' Administration out-patient[25] clinics to obviate the need for hospital admission.[26]

(7) Outpatient[27] dental services and treatment, and related dental appliances, for a veteran described in section 612(b)(1)(G) of this title.

(8) Diagnostic services (on an inpatient or outpatient basis) for observation or examination of a person to determine eligibility for a benefit or service under laws administered by the Veterans' Administration.[28]

(b) In the case of any veteran for whom the Administrator contracts to furnish care or services in a non-Veterans' Administration facility pursuant to a provision of subsection (a) of this section, the Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.

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[8]P.L. 100-322, §104(b)(1), struck out the dash and substituted "any of the following:".
[9]P.L. 100-322, §104(b)(2), struck out "hospital" and substituted "Hospital".
[10]P.L. 100-322, §104(b)(3), struck out the semicolon and substituted a period.
[11]P.L. 100-322, §104(b)(2), struck out "medical" and substituted "Medical".
[12]As in original; "section" should be deleted.
[13]P.L. 100-687, §1503(a)(1)(A), struck out "612(a)(4)" and substituted "paragraph (2), (3), or (4) of section 612(a)".
[14]P.L. 100-322, §101(e)(3)(A), struck out "612(f)(1)(A)(ii)" and substituted "612(a)(4) of this title, for a purpose described in section 612(a)(5)".
P.L. 100-687, §1503(a)(1)(B), inserted "(B)".
[15]P.L. 100-322, §101(e)(3)(B), struck out "612(g)" and substituted "612(a)(3) (other than a veteran who is a former prisoner of war)".
[16]See footnote 10.
[17]See footnote 9.
[18]P.L. 100-322, §104(a)(1), inserted "or nursing home care under section 620 of this title".
[19]See footnote 10.
[20]See footnote 9.
[21]See footnote 10.
[22]See footnote 9.
[23]See footnote 10.
[24]P.L. 100-322, §104(b)(2), struck out "diagnostic" and substituted "Diagnostic".
[25]As in original.
[26]P.L. 100-322, §104(b)(4), struck out "; or" and substituted a period.
[27]P.L. 100-322, §104(b)(2), struck out "outpatient" and substituted "Outpatient".
[28]P.L. 100-322, §104(a)(2), added paragraph (8).

(c) The Administrator shall include in the budget documents which the Administrator submits to Congress for any fiscal year a detailed report on the furnishing of contract care and services during the most recently completed fiscal year under this section, sections 612A, 620, 620A, 624, and 632 of this title, and section 115 of the Veterans' Benefits and Services Act of 1988.[39]

* * * * * * *

§613. Medical care for survivors and dependents of certain veterans

(a) The Administrator is authorized to provide medical care, in accordance with the provisions of subsection (b) of this section, for—

(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability,

(2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and

(3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct,

who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS).

(b) In order to accomplish the purposes of subsection (a) of this section, the Administrator shall provide for medical care in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under chapter 55 of title 10 (CHAMPUS), by—

(1) entering into an agreement with the Secretary of Defense under which the Secretary shall include coverage for such medical care under the contract, or contracts, the Secretary enters into to carry out such chapter 55, and under which the Administrator shall fully reimburse the Secretary for all costs and expenditures made for the purposes of affording the medical care authorized pursuant to this section; or

(2) contracting in accordance with such regulations as the Administrator shall prescribe for such insurance, medical service, or health plans as the Administrator deems appropriate.

In cases in which Veterans' Administration medical facilities are equipped to provide the care and treatment, the Administrator is also authorized to carry out such purposes through the use of such facilities not being utilized for the care of eligible veterans.

(c) For the purposes of this section, a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution approved under chapter 36 of this title, and (3) who, while pursuing such course of instruction, incurs a disabling illness or injury (including a disabling illness or injury incurred between terms, semesters, or quarters or during a vacation or holiday period) which is not the result of such child's own willful misconduct and which results in such child's inability to continue or resume such child's chosen program of education at an approved educational institution shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first.

(d) Notwithstanding the second sentence of section 1086(c) of title 10 or any other provision of law, any spouse, surviving spouse, or child who, after losing eligibility for medical care under this section by virtue of becoming entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), has exhausted any such benefits shall become eligible for medical care under this section and shall not thereafter lose such eligibility under this section by virtue of becoming again eligible for such hospital insurance benefits.

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CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

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§2001. Definitions

For the purposes of this chapter—

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[39]P.L. 100-322, §112(a), added subsection (c).

(1) The term "special disabled veteran" has the same meaning provided in section 2011(1) of this title.

(2) The term "veteran of the Vietnam era" has the same meaning provided in section 2011(2) of this title.

(3) The term "disabled veteran" has the same meaning provided in section 2011(3) of this title.

(4) The term "eligible veteran" has the same meaning provided in section 2011(4) of this title.

(5) The term "eligible person" means—

(A) the spouse of any person who died of a service-connected disability,

(B) the spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power, or

(C) the spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

(6) The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and may include, to the extent determined necessary and feasible, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(7) The term "local employment service office" means a service delivery point which has an intrinsic management structure and at which employment services are offered in accordance with the Wagner-Peyser Act.[30]

(8) The term "Secretary" means the Secretary of Labor.[31]

§2002. Purpose

The Congress declares as its intent and purpose that there shall be an effective (1) job and job training counseling service program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons and that, to this end policies and regulations shall be promulgated and administered by an Assistant Secretary of Labor for Veterans' Employment and Training[32], established by section 2002A of this title, through a Veterans Employment and Training[33] Service within the Department of Labor, so as to provide such veterans and persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

§2002A. Assistant Secretary of Labor for Veterans' Employment and Training; Regional Administrators[34]

(a)[35] There is established within the Department of Labor an Assistant Secretary of Labor for Veterans' Employment and Training[36], appointed by the President by and with the advice and consent of the Senate, who shall be the principal advisor to the Secretary[37] with respect to the formulation and implementation of all departmental policies and procedures to carry out (1) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (2) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans. The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans' Employment.

(b) The Secretary shall—[38]

(1) except as expressly provided otherwise, carry out all provisions of this chapter and chapter 43 of this title through the Assistant Secretary of Labor for Veterans' Employment and Training and administer through such Assistant Secretary all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of disabled veterans, veterans of the Vietnam era, and all other eligible veterans and eligible persons;

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[30] P.L. 100-323, §3(b), added paragraph (7).
[31] P.L. 100-323, §15(a)(1), added paragraph (8).
[32] P.L. 100-323, §15(b)(1), inserted "and Training".
[33] P.L. 100-323, §15(d), struck out "Veterans Employment" and substituted "Veterans' Employment and Training".
[34] P.L. 100-323, §2(e)(3)(A), inserted "and Training; Regional Administrators".
[35] P.L. 100-323, §2(a)(1), inserted "(a)".
[36] See footnote 32.
[37] P.L. 100-323, §15(a)(2), struck out "of Labor".
[38] Alignment as in original.

(2) in order to make maximum use of available resources in meeting such needs, encourage all such programs and all grantees under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns), educational institutions, trade associations, and labor unions;

(3) ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to eligible veterans under all such programs by coordinating and consulting with the Administrator with respect to (A) programs conducted under other provisions of this title, with particular emphasis on coordination of such programs with readjustment counseling activities carried out under section 612A of this title, apprenticeship or other on-the-job training programs carried out under section 1787 of this title, and rehabilitation and training activities carried out under chapter 31 of this title, and (B) the Veterans' Job Training Act (29 U.S.C. 1721 note);

(4) ensure that job placement activities are carried out in coordination and cooperation with appropriate State public employment service officials;

(5) subject to subsection (c)(2) of this section, make available for use in each State, directly or by grant or contract, such funds as may be necessary (A) to support (i) disabled veterans' outreach program specialists appointed under section 2003A(a)(1) of this title, and (ii) local veterans' employment representatives assigned under section 2004(b) of this title, and (B) to support the reasonable expenses of such specialists and representatives for training, travel, supplies, and fringe benefits, including travel expenses and per diem for attendance at the National Veterans' Employment and Training Services Institute established under section 2009 of this title;

(6) monitor and supervise on a continuing basis the distribution and use of funds provided for use in the States under paragraph (5) of this subsection; and

(7) monitor the appointment of disabled veterans' outreach specialists and the assignment of local veterans' employment representatives in order to ensure compliance with the provisions of sections 2003A(a)(1) and 2004(a)(4), respectively, of this title.[39]

(c)(1) The distribution and use of funds under subsection (b)(5) of this section in order to carry out sections 2003A(a) and 2004(a) of this title shall be subject to the continuing supervision and monitoring of the Secretary and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section or section 2003A or 2004 of this title.

(2) In determining the terms and conditions of a grant or contract under which funds are made available in a State in order to carry out section 2003A or 2004 of this title, the Secretary shall take into account (A) the results of the evaluations, carried out pursuant to section 2003(c)(15) of this title, of the performance of local employment offices in the State, and (B) the monitoring carried out under this section.

(3) Each grant or contract by which funds are made available in a State shall contain a provision requiring the recipient of the funds to comply with the provisions of this chapter.[40]

(d) The Assistant Secretary of Labor for Veterans' Employment and Training shall promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under the Job Training Partnership Act and other federally funded employment and training programs.[41]

(e)(1) The Secretary shall assign to each region for which the Secretary operates a regional office a representative of the Veterans' Employment and Training Service to serve as the Regional Administrator for Veterans' Employment and Training in such region.

(2) Each such Regional Administrator shall be responsible for—

(A) ensuring the promotion, operation, and implementation of all veterans' employment and training programs and services within the region;

(B) monitoring compliance with section 2012 of this title with respect to veterans' employment under Federal contracts within the region;

(C) protecting and advancing veterans' reemployment rights within the region; and

(D) coordinating, monitoring, and providing technical assistance on veterans' employment and training programs with respect to all entities receiving funds under grants from or contracts with the Department of Labor within the region.[42]

§2003. Directors and Assistant Directors for Veterans' Employment and Training[43]

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[39] P.L. 100-323, §2(a)(2), added subsection (b).
[40] P.L. 100-323, §2(a)(2), added subsection (c).
[41] P.L. 100-323, §2(a)(2), added subsection (d).
[42] P.L. 100-323, §2(a)(2), added subsection (e).
[43] P.L. 100-323, §15(c)(3)(A), amended the heading of §2003 in its entirety.

(a) The Secretary[44] shall assign to each State a representative of the Veterans' Employment Service to serve as the Director for Veterans' Employment and Training[45], and shall assign full-time Federal clerical support to each such Director. The Secretary shall also assign to each State one Assistant Director for Veterans' Employment and Training[46] per each 250,000 veterans and eligible persons of the State veterans population and such additional Assistant Directors for Veterans' Employment and Training[47] as the Secretary shall determine, based on the data collected pursuant to section 2007 of this title, to be necessary to assist the Director for Veterans' Employment and Training[48] to carry out effectively in that State the purposes of this chapter. Full-time Federal clerical support personnel assigned to Directors for Veterans' Employment and Training[49] shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(b)(1)(A)[50] Each Director for Veterans' Employment and Training[51] and Assistant Director for Veterans' Employment and Training[52] (i)[53] shall, except as provided in subparagraph (B) of this paragraph, be a qualified[54] veteran who at the time of appointment has been a bona fide resident of the State for at least two years, and (ii)[55] shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(B) If, in appointing a Director or Assistant Director for any State under this section, the Secretary determines that there is no qualified veteran available who meets the residency requirement in subparagraph (A)(i), the Secretary may appoint as such Director or Assistant Director any qualified veteran.[56]

(2) Each Director for Veterans' Employment and Training[57] and Assistant Director for Veterans' Employment and Training[58] shall be attached to the public employment service system of the State to which they are assigned. They shall be administratively responsible to the Secretary[59] for the execution of the veterans' and eligible persons' counseling and placement policies of the Secretary through the public employment service system and in cooperation with other employment and training programs administered by the Secretary, by grantees of Federal or federally funded employment and training programs in the State, or directly by the State.

(c) In cooperation with the staff of the public employment service system and the staffs of each such other program in the State, the Director for Veterans' Employment and Training[60] and Assistant Directors for Veterans' Employment and Training[61] shall—

(1)(A) functionally supervise the provision of services to eligible veterans and eligible persons by such system and such program and their staffs, and (B)[62] be functionally responsible for the supervision of the registration of eligible veterans and eligible persons in local employment offices for suitable types of employment and training and for counseling and placement of eligible veterans and eligible persons in employment and job training programs, including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note)[63];

(2) engage in job development and job advancement activities for eligible veterans and eligible persons, including maximum coordination with appropriate

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[44]See footnote 37.
[45]P.L. 100-323, §15(c)(1), struck out "State Director for Veterans' Employment" and substituted "Director for Veterans' Employment and Training".
[46]P.L. 100-323, §15(c)(1), struck out "Assistant State Director for Veterans' Employment" and substituted "Assistant Director for Veterans' Employment and Training".
[47]P.L. 100-323, §15(c)(1), struck out "Assistant State Directors for Veterans' Employment" and substituted "Assistant Directors for Veterans' Employment and Training".
[48]See footnote 45.
[49]P.L. 100-323, §15(c)(1), struck out "State Directors for Veterans' Employment" and substituted "Directors for Veterans' Employment and Training".
[50]P.L. 100-323, §5(1), inserted "(A)".
[51]See footnote 45.
[52]See footnote 46.
[53]P.L. 100-323, §5(2), redesignated subparagraph (A) as clause (i).
[54]P.L. 100-323, §5(3), struck out "be an eligible" and substituted ", except as provided in subparagraph (B) of this paragraph, be a qualified".
[55]P.L. 100-323, §5(2), redesignated subparagraph (B) as clause (ii).
[56]P.L. 100-323, §5(4), added subparagraph (B).
[57]See footnote 45.
[58]See footnote 46.
[59]See footnote 37.
[60]See footnote 45.
[61]See footnote 47.
[62]P.L. 100-323, §7(a)(1)(A), inserted subparagraph (A) and "(B)".
[63]P.L. 100-323, §7(a)(1)(B), inserted ", including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note)".

officials of the Veterans' Administration in that agency's carrying out of its responsibilities under subchapter IV of chapter 3 of this title and in the conduct of job fairs, job marts, and other special programs to match eligible veterans and eligible persons with appropriate job and job training opportunities and otherwise to promote the employment of eligible veterans and eligible persons[64];

(3) assist in securing and maintaining current information as to the various types of available employment and training opportunities, including maximum use of electronic data processing and telecommunications systems and the matching of an eligible veteran's or an eligible person's particular qualifications with an available job or on-job training or apprenticeship opportunity which is commensurate with those qualifications;

(4) promote the interest of employers and labor unions in employing eligible veterans and eligible persons and in conducting on-job training and apprenticeship programs for such veterans and persons;

(5) maintain regular contact with employers, labor unions, training programs and veterans' organizations with a view to keeping them advised of eligible veterans and eligible persons available for employment and training and to keeping eligible veterans and eligible persons advised of opportunities for employment and training;

(6) promote and facilitate the participation of veterans in Federal and federally funded employment and training programs and directly monitor the implementation and operation of such programs to ensure that eligible veterans, veterans of the Vietnam era, disabled veterans, and eligible persons receive such priority or other special consideration in the provision of services as is required by law or regulation;

(7) assist in every possible way in improving working conditions and the advancement of employment of eligible veterans and eligible persons;

(8) supervise the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

(9) be responsible for ensuring that complaints of discrimination filed under such section are resolved in a timely fashion;

(10) working closely with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, cooperate with employers to identify disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

(11) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need employment placement assistance or vocational training assistance;[65]

(12) when requested by a Federal or State agency or a private employer, assist such agency or employer in identifying and acquiring prosthetic and sensory aids and devices which tend to enhance the employability of disabled veterans;[66]

(13) monitor the implementation of Federal laws requiring veterans preference in employment and job advancement opportunities within the Federal Government and report to the Office of Personnel Management or other appropriate agency, for enforcement or other remedial action, any evidence of failure to provide such preference or to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation;[67]

(14) monitor, through disabled veterans' outreach program specialists and local veterans' employment representatives, the listing of vacant positions with State employment agencies by Federal agencies, and report to the Office of Personnel Management or other appropriate agency, for enforcement or other remedial action, any evidence of failure to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation; and[68]

(15)(A) not less frequently than annually, conduct, subject to subclause (B) of this clause, an evaluation at each local employment office of the services provided to eligible veterans and eligible persons and make recommendations for corrective action as appropriate; and

(B) carry out such evaluations in the following order of priority: (I) offices that

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[64] P.L. 100-323, §7(a)(2), inserted "and otherwise to promote the employment of eligible veterans and eligible persons".
[65] P.L. 100-323, §7(a)(3), struck out "and".
[66] P.L. 100-323, §7(a)(4), struck out the period and substituted a semicolon.
[67] P.L. 100-323, §7(a)(5), added paragraph (13).
[68] P.L. 100-323, §7(a)(5), added paragraph (14).

demonstrated less than satisfactory performance during either of the two previous program years, (II) offices with the largest number of veterans registered during the previous program year, and (III) other offices as resources permit.[69]

§2003A. Disabled veterans' outreach program

(a)(1)[70] The amount of funds made available for use in a State under section 2002A(b)(5)(A)(i) of this title shall be sufficient to support the appointment of one disabled veterans' outreach program specialist for each 5,300 veterans of the Vietnam era and disabled veterans residing in such State.[71] Each such specialist shall be a qualified[72] veteran. Preference shall be given in the appointment of such specialists to qualified[73] disabled veterans of the Vietnam era. If the Secretary finds that a qualified[74] disabled veteran of the Vietnam era is not available for any such appointment, preference for such appointment shall be given to other qualified[75] disabled veterans. If the Secretary finds that no qualified[76] disabled veteran is available for such appointment, such appointment may be given to any qualified[77] veteran. Each such specialist shall be compensated at a rate not less than the rate prescribed for an entry level professional in the State government of the State concerned.

(2)[78] Specialists appointed pursuant to[79] this subsection shall be in addition to and shall not supplant employees assigned to local employment service offices pursuant to section 2004 of this title.[80]

(b)(1) Pursuant to regulations prescribed by the Secretary of Labor, disabled veterans' outreach program specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with priority for the provision of services in the following order:

(A) Services to disabled veterans of the Vietnam era who are participating in or have completed a program of vocational rehabilitation under chapter 31 of this title.

(B) Services to other disabled veterans.

(C) Services to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

In the provision of services in accordance with this paragraph, maximum emphasis in meeting the employment needs of veterans shall be placed on assisting economically or educationally disadvantaged veterans.

(2) Not more than three-fourths of the disabled veterans' outreach program specialists in each State shall be stationed at local employment service offices in such State. The Secretary, after consulting the Administrator and the Director for Veterans' Employment and Training[81] assigned to a State under section 2003 of this title, may waive the limitation in the preceding sentence for that State so long as the percentage of all disabled veterans' outreach program specialists that are stationed at local employment service offices in all States does not exceed 80 percent. Specialists not so stationed shall be stationed at centers established by the Veterans' Administration to provide a program of readjustment counseling pursuant to section 612A of this title, veterans assistance offices established by the Veterans' Administration pursuant to section 242 of this title, and such other sites as may be determined to be appropriate in accordance with regulations prescribed by the Secretary after consultation with the Administrator.

(c) Each disabled veterans' outreach program specialist shall carry out the following functions for the purpose of providing services to eligible veterans in accordance with the priorities set forth in subsection (b) of this section:

(1) Development of job and job training opportunities for such veterans through contacts with employers, especially small- and medium-size private sector employers.

(2) Pursuant to regulations prescribed by the Secretary after consultation with the Administrator, promotion and development of apprenticeship and other on-job training positions pursuant to section 1787 of this title.

(3) The carrying out of outreach activities to locate such veterans through contacts with local veterans organizations, the Veterans' Administration, the State employment service agency and local employment service offices, and community-based organizations.

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[69] P.L. 100-323, §7(a)(5), added paragraph (15).
[70] P.L. 100-323, §2(e)(1)(A)(i), struck out paragraph (1) and redesignated paragraph (2) as paragraph (1).
[71] P.L. 100-323, §2(e)(1)(A)(ii)(I), amended this sentence in its entirety.
[72] P.L. 100-323, §2(e)(1)(A)(ii)(II), inserted "qualified".
[73] P.L. 100-323, §2(e)(1)(A)(ii)(III), inserted "qualified".
[74] See footnote 73.
[75] See footnote 73.
[76] See footnote 73.
[77] P.L. 100-323, §2(e)(1)(A)(ii)(IV), inserted "qualified".
[78] P.L. 100-323, §2(e)(1)(A)(i), struck out paragraph (3) and redesignated paragraph (4) as paragraph (2).
[79] P.L. 100-323, §2(e)(1)(A)(iii), struck out "paragraph (2) of".
[80] P.L. 100-323, §2(e)(1)(A)(i), struck out paragraph (5).
[81] See footnote 45.

(4) Provision of appropriate assistance to community-based groups and organizations and appropriate grantees under other Federal and federally funded employment and training programs (including part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.))[82] in providing services to such veterans.

(5) Provision of appropriate assistance to local employment service office employees with responsibility for veterans in carrying out their responsibilities pursuant to this chapter.

(6) Consultation and coordination with other appropriate representatives of Federal, State, and local programs (including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note))[83] for the purpose of developing maximum linkages to promote employment opportunities for and provide maximum employment assistance to such veterans.

(7) The carrying out of such other duties as will promote the development of entry-level and career job opportunities for such veterans.

(8) Development of outreach programs in cooperation with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, with educational institutions, and with employers in order to ensure maximum assistance to disabled veterans who have completed or are participating in a vocational rehabilitation program under such chapter.

(9) Provision of vocational guidance or vocational counseling services, or both, to veterans with respect to veterans' selection of and changes in vocations and veterans' vocational adjustment.[84]

(10) Provision of services as a case manager under section 14(b)(1)(A) of the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note).[85]

§2004. Local veterans' employment representatives[86]

(a)(1) Beginning with fiscal year 1988, the total of the amount of funds made available for use in the States under section 2002A(b)(5)(A)(ii) of this title shall be sufficient to support the assignment of 1,600 full-time local veterans' employment representatives and the States' administrative expenses associated with the assignment of that number of such representatives and shall be allocated to the several States so that each State receives funding sufficient to support—

(A) the number of such representatives who were assigned in such State on January 1, 1987, for which funds were provided under this chapter, plus one additional such representative;

(B) the percentage of the 1,600 such representatives for which funding is not provided under clause (A) of this paragraph which is equal to the average of (i) the percentage of all veterans residing in the United States who reside in such State, (ii) the percentage of the total of all eligible veterans and eligible persons registered for assistance with local employment service offices in the United States who are registered for assistance with local employment service offices in such State, and (iii) the percentage of all full-service local employment service offices in the United States which are located in such State; and

(C) the State's administrative expenses associated with the assignment of the number of such representatives for which funding is allocated to the State under clauses (A) and (B) of this paragraph.

(2)(A) The local veterans' employment representatives allocated to a State pursuant to paragraph (1) of this subsection shall be assigned by the administrative head of the employment service in the State, after consultation with the Director for Veterans' Employment and Training for the State, so that as nearly as practical (i) one full-time representative is assigned to each local employment service office at which at least 1,100 eligible veterans and eligible persons are registered for assistance, (ii) one additional full-time representative is assigned to each local employment service office for each 1,500 eligible veterans and eligible persons above 1,100 who are registered at such office for assistance, and (iii) one half-time representative is assigned to each local employment service office at which at least 350 but less than 1,100 eligible veterans and eligible persons are registered for assistance.

(B) In the case of a service delivery point (other than a local employment service office described in subparagraph (A) of this paragraph) at which employment services are offered under the Wagner-Peyser Act, the head of such service delivery point shall

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[82] P.L. 100-323, §7(b)(1), inserted "(including part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.))".

[83] P.L. 100-323, §7(b)(2), inserted "(including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note))".

[84] P.L. 100-323, §7(b)(3), added paragraph (9).

[85] P.L. 100-323, §7(b)(3), added paragraph (10).

P.L. 100-323, §2(e)(1)(B), struck out subsection (d).

[86] P.L. 100-323, §3(a), amended §2004 in its entirety.

be responsible for ensuring compliance with the provisions of this title providing for priority services for veterans and priority referral of veterans to Federal contractors.

(3) For the purposes of this subsection, an individual shall be considered to be registered for assistance with a local employment service office during a program year if the individual—

(A) registered, or renewed such individual's registration, for assistance with the office during that program year; or

(B) so registered or renewed such individual's registration during a previous program year and, in accordance with regulations which the Secretary shall prescribe, is counted as still being registered for administrative purposes.

(4) In the assigning of local veterans' employment representatives on or after July 1, 1988, preference shall be given to qualified eligible veterans or eligible persons. Preference shall be accorded first to qualified service-connected disabled veterans; then, if no such disabled veteran is available, to qualified eligible veterans; and, if no such eligible veteran is available, then to qualified eligible persons.

(b) Local veterans' employment representatives shall—

(1) functionally supervise the providing of services to eligible veterans and eligible persons by the local employment service staff;

(2) maintain regular contact with community leaders, employers, labor unions, training programs, and veterans' organizations for the purpose of (A) keeping them advised of eligible veterans and eligible persons available for employment and training, and (B) keeping eligible veterans and eligible persons advised of opportunities for employment and training;

(3) provide directly, or facilitate the provision of, labor exchange services by local employment service staff to eligible veterans and eligible persons, including intake and assessment, counseling, testing, job-search assistance, and referral and placement;

(4) encourage employers and labor unions to employ eligible veterans and eligible persons and conduct on-the-job training and apprenticeship programs for such veterans and persons;

(5) promote and monitor the participation of veterans in federally funded employment and training programs, monitor the listing of vacant positions with State employment agencies by Federal agencies, and report to the Director for Veterans' Employment and Training for the State concerned any evidence of failure to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation;

(6) monitor the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

(7) work closely with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, and cooperate with employers in identifying disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

(8) refer eligible veterans and eligible persons to training, supportive services, and educational opportunities, as appropriate;

(9) assist, through automated data processing, in securing and maintaining current information regarding available employment and training opportunities;

(10) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need services available at the local employment service office;

(11) when requested by a Federal or State agency, a private employer, or a service-connected disabled veteran, assist such agency, employer, or veteran in identifying and acquiring prosthetic and sensory aids and devices needed to enhance the employability of disabled veterans; and

(12) facilitate the provision of guidance or counseling services, or both, to veterans who, pursuant to section 5(b)(3) of the Veterans' Job Training Act (29 U.S.C. 1721 note), are certified as eligible for participation under such Act.

(c) Each local veterans' employment representative shall be administratively responsible to the manager of the local employment service office and shall provide reports, not less frequently than quarterly, to the manager of such office and to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons.

(d) Local veterans' employment representatives shall be assigned, in accordance with this section, by the administrative head of the employment service in each State after consultation with the Director for Veterans' Employment and Training.

§2004A. Performance of disabled veterans' outreach program specialists and local veterans' employment representatives[87]

(a)(1) Subject to paragraph (2) of this subsection, each State employment agency shall develop and apply standards for the performance of disabled veterans' outreach program specialists appointed under section 2003A(a) of this title and local veterans' employment representatives assigned under section 2004(b) of this title.

(2)(A) Such standards shall be consistent with the duties and functions specified in section 2003A(b) of this title with respect to such specialists and section 2004(b)(1) through (12) of this title with respect to such representatives.

(B) In developing such standards, the State employment agency—

(i) shall take into account (I) the prototype developed under paragraph (3) of this subsection, and (II) the comments submitted under clause (ii) of this subparagraph by the Director for Veterans' Employment and Training for the State;

(ii) shall submit to such Director proposed standards for comment;

(iii) may take into account the State's personnel merit system requirements and other local circumstances and requirements; and

(iv) may request the assistance of such Director.

(C) Such standards shall include as one of the measures of the performance of such a specialist the extent to which the specialist, in serving as a case manager under section 14(b)(1)(A) of the Veterans' Job Training Act (29 U.S.C. 1721 note), facilitates rates of successful completion of training by veterans participating in programs of job training under the Act.

(3)(A) The Secretary, after consultation with State employment agencies or their representatives, or both, shall provide to such agencies a prototype of performance standards for use by such agencies in the development of performance standards under subsection (a)(1) of this section.

(B) Each Director for Veterans' Employment and Training—

(i) shall, upon the request of the State employment agency under paragraph (2)(B)(iv) of this subsection, provide appropriate assistance in the development of performance standards,

(ii) may, within 30 days after receiving proposed standards under paragraph (2)(B)(ii) of this subsection, provide comments on the proposed standards, particularly regarding the consistency of the proposed standards with such prototype.

(b)(1) Directors for Veterans' Employment and Training and Assistant Directors for Veterans' Employment and Training shall regularly monitor the performance of the specialists and representatives referred to in subsection (a)(1) of this section through the application of the standards required to be prescribed by subsection (a)(1).

(2) A Director for Veterans' Employment and Training for a State may submit to the head of the employment service in the State recommendations and comments in connection with each annual performance rating of such specialists and representatives in the State.

§2005. Cooperation of Federal agencies

(a) [88] All Federal agencies shall furnish the Secretary[89] such records, statistics, or information as the Secretary may deem necessary or appropriate in administering the provisions of this chapter, and shall otherwise cooperate with the Secretary in providing continuous employment and training opportunities for eligible veterans and eligible persons.

(b) For the purpose of assisting the Secretary and the Administrator in identifying employers with potential job training opportunities under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note) and otherwise in order to carry out this chapter, the Secretary of Defense shall provide, not more than 30 days after the date of the enactment of this subsection, the Secretary and the Administrator with any list maintained by the Secretary of Defense of employers participating in the National Committee for Employer Support of the Guard and Reserve and shall provide, on the 15th day of each month thereafter, updated information regarding the list.[90]

§2006. Estimate of funds for administration; authorization of appropriations

(a) The Secretary[91] shall estimate the funds necessary for the proper and efficient administration of this chapter and chapters 42 and 43 of this title. Such estimated sums shall include the annual amounts necessary for salaries, rents, printing and binding, travel, and communications. Sums thus estimated shall be included as a special item in the annual budget for the Department of Labor. Estimated funds necessary for proper counseling, placement, and training services to eligible veterans

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[87] P.L. 100-323, §4(a)(1), added §2004A.
[88] P.L. 100-323, §6(a)(1), inserted "(a)".
[89] See footnote 37.
[90] P.L. 100-323, §6(a)(2), added subsection (b).
[91] See footnote 37.

and eligible persons provided by the various State public employment service agencies shall each be separately identified in the budgets of those agencies as approved by the Department of Labor. Funds estimated pursuant to the first sentence of this subsection shall include amounts necessary in all of the States for the purposes specified in paragraph (5) of section 2002A(b) of this title and to fund the National Veterans' Employment and Training Services Institute under section 2009[92] of this title and shall be approved by the Secretary[93] only if the level of funding proposed is in compliance with such sections[94]. Each budget submission with respect to such funds shall include separate listings of the amount for the National Veterans' Employment and Training Services Institute and of the proposed numbers, by State, of disabled veterans' outreach program specialists appointed under section 2003A of this title and local veterans' employment representatives assigned under section 2004 of this title, together with information demonstrating the compliance of such budget submission with the funding requirments specified in the preceding sentence.[95]

(b) There are authorized to be appropriated such sums as may be necessary for the proper and efficient administration of this chapter.

(c) In the event that the regular appropriations Act making appropriations for administrative expenses for the Department of Labor with respect to any fiscal year does not specify an amount for the purposes specified in subsection (b) of this section for that fiscal year, then of the amounts appropriated in such Act there shall be available only for the purposes specified in subsection (b) of this section such amount as was set forth in the budget estimate submitted pursuant to subsection (a) of this section.

(d) Any funds made available pursuant to subsections (b) and (c) of this section shall not be available for any purpose other than those specified in such subsections[96].

§2007. Administrative controls; annual report

(a) The Secretary[97] shall establish administrative controls for the following purposes:

(1) To insure that each eligible veteran, especially veterans of the Vietnam era and disabled veterans, and each eligible person who requests assistance under this chapter shall promptly be placed in a satisfactory job or job training opportunity or receive some other specific form of assistance designed to enhance such veteran's and eligible person's employment prospects substantially, such as individual job development or employment counseling services.

(2) To determine whether or not the employment service agencies in each State have committed the necessary staff to insure that the provisions of this chapter are carried out; and to arrange for necessary corrective action where staff resources have been determined by the Secretary[98] to be inadequate.

(b) The Secretary[99] shall establish definitive performance standards for determining compliance by the State public employment service agencies with the provisions of this chapter and chapter 42 of this title. A full report as to the extent and reasons for any noncompliance by any such State agency during any fiscal year, together with the agency's plan for corrective action during the succeeding year, shall be included in the annual report of the Secretary[100] required by subsection (c) of this section.

(c) Not later than February 1 of each year, the Secretary shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the success during the preceding program year of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of this chapter and programs for the provision of employment and training services to meet the needs of eligible veterans and eligible persons. The report shall include—

(1) specification, by State and by age group, of the numbers of eligible veterans, veterans of the Vietnam era, disabled veterans, special disabled veterans, and eligible persons who registered for assistance with the public employment service system and, for each of such categories, the numbers referred to and placed in permanent and other jobs, the numbers referred to and placed in jobs and job training programs supported by the Federal Government, the number counseled,

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[92]P.L. 100-323, §2(b)(1)(A), struck out "to fund the disabled veterans' outreach program under section 2003A" and substituted "in all of the States for the purposes specified in paragraph (5) of section 2002A(b) of this title and to fund the National Veterans' Employment and Training Services Institute under section 2009".

[93]See footnote 37.

[94]P.L. 100-323, §2(b)(1)(B), struck out "section" and substituted "sections".

[95]P.L. 100-323, §2(b)(2), amended this sentence in its entirety.

P.L. 100-323, §2(e)(2), struck out "The Secretary shall carry out this subsection through the Assistant Secretary for Veterans' Employment.".

[96]P.L. 100-323, §2(c), struck out ", except with the approval of the Secretary of Labor, upon the recommendation of the Assistant Secretary of Labor for Veterans' Employment, based on a demonstrated lack of need for such funds for such purposes".

[97]See footnote 37.

[98]See footnote 37.

[99]See footnote 37.

[100]See footnote 37.

and the number who received some, and the number who received no, reportable service;

(2) a comparison of the job placement rate for each of the categories of veterans and persons described in clause (1) of this subsection with the job placement rate for nonveterans of the same age groups registered for assistance with the public employment system in each State;

(3) any determination made by the Secretary during the preceding fiscal year under section 2006 of this title or subsection (a)(2) of this section and a statement of the reasons for such determination;

(4) a report on activities carried out during the preceding program year under sections 2003A and 2004 of this title; and

(5) a report on the operation during the preceding program year of programs for the provision of employment and training services designed to meet the needs of eligible veterans and eligible persons, including an evaluation of the effectiveness of such programs during such program year in meeting the requirements of section 2002A(b) of this title, the efficiency with which services were provided through such programs during such year, and such recommendations for further legislative action (including the need for any changes in the formulas governing the appointment of disabled veterans' outreach program specialists under section 2003A(a)(2) of this title and the assignment of local veterans' employment representatives under section 2004(b) of this title and the allocation of funds for the support of such specialists and representatives) relating to veterans' employment and training as the Secretary considers appropriate.[101]

§2008. Cooperation and coordination[102]

(a)[103] In carrying out the Secretary's responsibilities under this chapter, the Secretary[104] shall from time to time consult with the Administrator and keep the Administrator fully advised of activities carried out and all data gathered pursuant to this chapter to insure maximum cooperation and coordination between the Department of Labor and the Veterans' Administration.

(b) The Administrator shall provide to appropriate employment service offices and Department of Labor offices, as designated by the Secretary, on a monthly or more frequent basis, the name and address of each employer located in the areas served by such offices that offer a program of job training which has been approved by the Administrator under section 7 of the Veterans' Job Training Act (29 U.S.C. 1721 note).[105]

§2009. National Veterans' Employment and Training Services Institute[106]

(a) In order to provide for such training as the Secretary considers necessary and appropriate for the efficient and effective provision of employment, job-training, counseling, placement, job-search, and related services to veterans, the Secretary shall establish and make available such funds as may be necessary to operate a National Veterans' Employment and Training Services Institute for the training of disabled veterans' outreach program specialists, local veterans' employment representatives, Directors for Veterans' Employment and Training, and Assistant Directors for Veterans' Employment and Training, Regional Administrators for Veterans' Employment and Training, and such other personnel involved in the provision of employment, job-training, counseling, placement, or related services to veterans as the Secretary considers appropriate, including travel expenses and per diem for attendance at the Institute.

(b) In implementing this section, the Secretary shall, as the Secretary considers appropriate, provide, out of program funds designated for the Institute, training for Veterans' Employment and Training Service personnel, including travel expenses and per diem to attend the Institute.

§2010. Secretary of Labor's Committee on Veterans' Employment

(a) There is established within the Department of Labor an advisory committee to be known as the "Secretary's Committee on Veterans' Employment". The committee shall meet at least quarterly for the purpose of bringing to the attention of the Secretary problems and issues relating to veterans' employment.

(b) Notwithstanding section 2002A(b) of this title, the[107] committee shall be chaired by the Secretary[108]. The Assistant Secretary of Labor for Veterans' Employment and Training[109] shall serve as vice chairman of the committee. The committee shall

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[101] P.L. 100-323, §2(d), amended subsection (c) in its entirety.
[102] P.L. 100-323, §6(b)(2)(A), struck out "with the Veterans' Administration".
[103] P.L. 100-323, §6(b)(1)(A), inserted "(a)".
[104] See footnote 37.
[105] P.L. 100-323, §6(b)(1)(B), added subsection (b).
[106] P.L. 100-323, §8(a), amended §2009 in its entirety.
[107] P.L. 100-323, §15(a)(3), struck out "The" and substituted "Notwithstanding section 2002A(b) of this title, the".
[108] See footnote 37.
[109] See footnote 32.

include—

(1) representatives of—

(A) the Administrator;

(B) the Secretary of Defense;

(C) the Secretary of Health and Human Services;

(D) the Secretary of Education,[110]

(E)[111] the Director of the Office of Personnel Management;

(F)[112] the Chairman of the Equal Employment Opportunity Commission;[113]

(G)[114] the Administrator of the Small Business Administration;[115]

(H) the Postmaster General; and[116]

(I) any other agency of the Federal Government which has had its request to have a representative on the committee approved by the Secretary; and[117]

(2) a representative of each of the chartered veterans' organizations having a national employment program.

(c) Members of the committee shall serve without compensation or other reimbursement for their service on the committee.

§2010A. Special unemployment study[118]

(a) The Secretary, through the Bureau of Labor Statistics, shall conduct, on a biennial basis, studies of unemployment among special disabled veterans and among veterans who served in the Vietnam Theater of Operations during the Vietnam era and promptly report to the Congress on the results of such studies.

(b) The first study under this section shall be completed not later than 180 days after the date of the enactment of this section.

CHAPTER 42—EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS

§2011. Definitions

As used in this chapter—

(1) The term "special disabled veteran" means—

(A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans' Administration for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of this title to have a serious employment handicap; or

(B) a person who was discharged or released from active duty because of service-connected disability.

(2)(A) Subject to subparagraph (B) of this paragraph, the term "veteran of the Vietnam era" means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(B) No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

(3) The term "disabled veteran" means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans' Administration, or (B) a person who was discharged or released from active duty because of a service-connected disability.

(4) The term "eligible veteran" means a person who (A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.

(5) The term "department or agency" means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5 and the United States Postal Service and the Postal Rate Commission, and the term "department, agency, or instrumentality in the executive branch" includes the United States Postal Service and the Postal Rate Commission.

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[110] P.L. 100-323, §10(2), inserted this subclause (D).
[111] P.L. 100-323, §10(1), redesignated subclause (D) as subclause (E).
[112] P.L. 100-323, §10(1), redesignated subclause (E) as subclause (F).
[113] P.L. 100-323, §10(3), struck out "and".
[114] P.L. 100-323, §10(1), redesignated subclause (F) as subclause (G).
[115] P.L. 100-323, §10(3), struck out "and".
[116] P.L. 100-323, §10(4), added subclause (H).
[117] P.L. 100-323, §10(4), added subclause (I).
[118] P.L. 100-323, §9(a), added §2010A.

§2012. Veterans' employment emphasis under Federal contracts

(a) Any contract in the amount of $10,000 or more entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its suitable employment openings, and (2) each such local office shall give such veterans priority in referral to such employment openings.

(b) If any special disabled veteran or veteran of the Vietnam era believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary shall include as part of the annual report required by section 2007(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing suitable employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2) of this section.

(d)(1) Each contractor to whom subsection (a) of this section applies shall, in accordance with regulations which the Secretary shall prescribe, report at least annually to the Secretary on—

(A) the number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; and

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are veterans of the Vietnam era or special disabled veterans.

(2) The Secretary shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary.

§2013. Eligibility requirements for veterans under Federal employment and training programs

Any (1) amounts received as pay or allowances by any person while serving on active duty, (2) period of time during which such person served on such active duty, and (3) amounts received under chapters 11, 13, 31, 34, 35, and 36 of this title by an eligible veteran, and any amounts received by an eligible person under chapters 13 and 35 of such title, shall be disregarded in determining the needs or qualifications of participants in any public service employment program, any emergency employment program, any job training program assisted under the Economic Opportunity Act of 1964, any employment or training program assisted under the Comprehensive Employment and Training Act, or any other employment or training (or related) program financed in whole or in part with Federal funds.

§2014. Employment within the Federal Government

(a)(1) It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advancement opportunities within the Federal Government for qualified disabled veterans and veterans of the Vietnam era.

(2) For the purposes of this section, the term "agency" means a department, agency, or instrumentality in the executive branch.

(b)(1) To further the policy stated in subsection (a) of this section, veterans of the Vietnam era shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans readjustment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

(A) such an appointment may be made up to and including the level GS-9 or its equivalent;

(B) a veteran of the Vietnam era shall be eligible for such an appointment without any time limitation with respect to eligibility for such an appointment;

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(C) a veteran of the Vietnam era who is entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be eligible for such an appointment without regard to the number of years of education completed by such veteran; and

(D) a veteran given an appointment under the authority of this subsection whose employment under the appointment is terminated within one year after the date of such appointment shall have the same right to appeal that termination to the Merit Systems Protection Board as a career or career-conditional employee has during the first year of employment.

(2) No veterans readjustment appointment may be made under authority of this subsection after December 31, 1989.

(c) Each agency shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such agency as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health and Human Services, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each agency to carry out the purpose and provisions of this section. The Office shall periodically obtain (on at least an annual basis) information on the implementation of this section by each agency and on the activities of each agency to carry out the purpose and provisions of this section. The information obtained shall include specification of the use and extent of appointments made by each agency under subsection (b) of this section and the results of the plans required under subsection (c) of this section.

(e)(1) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section. Each such report shall include the following information with respect to each agency:

(A) The number of appointments made under subsection (b) of this section since the last such report and the grade levels in which such appointments were made.

(B) The number of individuals receiving appointments under such subsection whose appointments were converted to career or career-conditional appointments, or whose employment under such an appointment has terminated, since the last such report, together with a complete listing of categories of causes of appointment terminations and the number of such individuals whose employment has terminated falling into each such category.

(C) The number of such terminations since the last such report that were initiated by the agency involved and the number of such terminations since the last such report that were initiated by the individual involved.

(D) A description of the education and training programs in which individuals appointed under such subsection are participating at the time of such report.

(2) Information shown for an agency under clauses (A) through (D) of paragraph (1) of this subsection—

(A) shall be shown for all veterans; and

(B) shall be shown separately (i) for veterans of the Vietnam era who are entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty, and (ii) for other veterans.

(f) Notwithstanding section 2011 of this title, the terms "veteran" and "disabled veteran" as used in subsection (a) of this section shall have the meaning provided for under generally applicable civil service law and regulations.

(g) To further the policy stated in subsection (a) of this section, the Administrator may give preference to qualified special disabled veterans and qualified veterans of the Vietnam era for employment in the Veterans' Administration as veterans' benefits counselors and veterans' claims examiners and in positions to provide the outreach services required under section 241 of this title, to serve as veterans' representatives at certain educational institutions as provided in section 243 of this title, or to provide readjustment counseling under section 612A of this title to veterans of the Vietnam era.

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§2021. Right to reemployment of inducted persons; benefits protected

(a) In the case of any person who is inducted into the Armed Forces of the United States under the Military Selective Service Act (or under any prior or subsequent corresponding law) for training and service and who leaves a position (other than a temporary position) in the employ of any employer in order to perform such training and service, and (1) receives a certificate described in section 9(a) of the Military Selective Service Act (relating to the satisfactory completion of military service), and (2) makes application for reemployment within ninety days after such person is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its territories, or possessions, or political subdivisions thereof, or the District of Columbia, such person shall—

(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if such person so requests, be employed in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case;

(B) if such position was in the employ of a State, or political subdivision thereof, or a private employer, such person shall—

(i) if still qualified to perform the duties of such position, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer's successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Nothing in this chapter shall excuse noncompliance with any statute or ordinance of a State or political subdivision thereof establishing greater or additional rights or protections than the rights and protections established pursuant to this chapter.

(b)(1) Any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section shall be considered as having been on furlough or leave of absence during such person's period of training and service in the Armed Forces, shall be so restored or reemployed without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration or reemployment.

(2) It is hereby declared to be the sense of the Congress that any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.

(3) Any person who seeks or holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

(c) The rights granted by subsections (a) and (b) of this section to persons who left the employ of a State or political subdivision thereof and were inducted into the Armed Forces shall not diminish any rights such persons may have pursuant to any statute or ordinance of such State or political subdivision establishing greater or additional rights or protections.

§2022. Enforcement procedures

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section 2021(a), (b)(1), or (b)(3), or 2024 of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary party respondent. No State statute of limitations shall apply to any proceedings under this chapter.

§2023. Reemployment by the United States, territory, possession, or the District of Columbia

(a) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) and who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by any territory or possession, or political subdivision thereof, or by the District of Columbia, shall be so restored or reemployed by such agency or the successor to its functions, or by such territory, possession, political subdivision, or the District of Columbia. In any case in which, upon appeal of any person who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by the District of Columbia, the Director of the Office of Personnel Management finds that—

(1) such agency is no longer in existence and its functions have not been transferred to any other agency; or

(2) for any reason it is not feasible for such person to be restored to employment by such agency or by the District of Columbia;

the Director shall determine whether or not there is a position in any other agency in the executive branch of the Government or in the government of the District of Columbia for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists or by the government of the District of Columbia, as the case may be. The Director is authorized and directed to issue regulations giving full force and effect to the provisions of this section insofar as they relate to persons entitled to be restored to or employed in positions in the executive branch of the Government or in the government of the District of Columbia, including persons entitled to be reemployed under the last sentence of subsection (b) of this section. The agencies in the executive branch of the Government and the government of the District of Columbia shall comply with such rules, regulations, and orders issued by the Director pursuant to this subsection. The Director is authorized and directed when the Director finds, upon appeal of the person concerned, that any agency in the executive branch of the Government or the government of the District of Columbia has failed or refuses to comply with the provisions of this section, to issue an order specifically requiring such agency or the government of the District of Columbia to comply with such provisions and to compensate such person for any loss of salary or wages suffered by reason of failure to comply with such provisions, less any amounts received by such person through other employment, unemployment compensation, or readjustment allowances. Any such compensation ordered to be paid by the Director shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions, and shall be paid by the head of the agency concerned or by the government of the District of Columbia out of appropriations currently available for salary and expenses of such agency or government, and such appropriations shall be available for such purpose. As used in this chapter, the term "agency in the executive branch of the

Government" means any department, independent establishment, agency, or corporation in the executive branch of the United States Government (including the United States Postal Service and the Postal Rate Commission).

(b) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title, and who was employed, immediately before entering the Armed Forces, in the legislative branch of the Government, shall be so restored or employed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces. In any case in which it is not possible for any such person to be restored to or employed in a position in the legislative branch of the Government and such person is otherwise eligible to acquire a status for transfer to a position in the competitive service in accordance with section 3304(c) of title 5, the Director of the Office of Personnel Management shall, upon appeal of such person, determine whether or not there is a position in the executive branch of the Government for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists.

(c) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title and who was employed, immediately before entering the Armed Forces, in the judicial branch of the Government, shall be so restored or reemployed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces.

§2024. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

(b)(1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service limitation governing eligibility for reemployment rights under subsection (b)(1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than twelve

consecutive weeks shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If such an employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or such employer's successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or such employer's successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such employee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 502, 503, 504, or 505 of title 32 is considered active duty for training. For the purposes of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37 is considered inactive duty training.

(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than twelve consecutive weeks; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by the period of such active duty.

§2025. Assistance in obtaining reemployment

The Secretary of Labor, through the Office of Veterans' Reemployment Rights, shall render aid in the replacement in their former positions or reemployment of persons who have satisfactorily completed any period of active duty in the Armed Forces or the Public Health Service. In rendering such aid, the Secretary shall use existing Federal and State agencies engaged in similar or related activities and shall utilize the assistance of volunteers.

§2026. Prior rights for reemployment

In any case in which two or more persons who are entitled to be restored to or employed in a position under the provisions of this chapter or of any other law relating to similar reemployment benefits left the same position in order to enter the Armed Forces, the person who left such position first shall have the prior right to be restored thereto or reemployed on the basis thereof, without prejudice to the reemployment rights of the other person or persons to be restored or reemployed.

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CHAPTER 51—CLAIMS[119], EFFECTIVE DATES, AND PAYMENTS

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§3005. Joint applications for social security and dependency and indemnity compensation

The Administrator and the Secretary of Health and Human Services shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.); and when an application on such form has been filed with either the Administrator or the Secretary of Health and Human Services, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with the Administrator, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Administrator with such application, and which may be needed by the Secretary in connection therewith, shall be transmitted by the Administrator to the Secretary; and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator. The preceding sentence shall not prevent the Secretary and the Administrator from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

§3006. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Administrator as the Administrator may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

§3101. Nonassignability and exempt status of benefits

(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and

[119]P.L. 100-687, §103(c)(2), struck out "APPLICATIONS", and substituted "CLAIMS".

has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Veterans' Administration shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Veterans' Administration but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 3105 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Veterans' Administration of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

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§3103A. Minimum active-duty service requirement

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Veterans' Administration that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Veterans' Administration.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;

(B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;

(C) to a person who has a disability that the Administrator has determined to be compensable under chapter 11 of this title;

(D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;

(E) to benefits under chapter 19 of this title; or

(F) to benefits under chapter 30 of this title by reason of—

(i) a discharge or release from active duty for the convenience of the Government, as described in sections 1411(a)(1)(A)(ii)(II) and 1412(b)(1)(A)(iv) of this title;

(ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Administrator determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(ii) of this title; or

(iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(v) of this title.[120]

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Veterans' Administration.

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.

(d)(1) Notwithstanding any other provision of law and except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under Federal law (other than this title or any other law administered by the Veterans' Administration), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty on or after the date of the enactment of this subsection[121] and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

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[120]P.L. 100-689, §102(b)(3), amended subparagraph (F) in its entirety.

[121]October 14, 1982 [P.L. 97-306, 96 Stat. 1445].

(3) Paragraph (1) of this subsection does not apply—

(A) to any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a) of the Social Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning on or after the date of the enactment of this subsection, or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term "benefit" includes a right or privilege, but does not include a refund of a participant's contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

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§3112. Annual adjustment of certain benefit rates

(a) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Administrator shall, effective on the date of such increase in benefit amounts, increase each maximum annual rate of pension under sections 521, 541, and 542 of this title and the rate of increased pension paid under such sections 521 and 541 on account of children, as such rates were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(b)(1) Whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) as a result of a determination made under section 215(i) of such Act (42 U.S.C. 415(i)), the Administrator shall, effective on the date of such increase in benefit amounts, increase the maximum monthly rates of dependency and indemnity compensation for parents payable under subsections (b), (c), and (d), and the monthly rate provided in subsection (g), of section 415 of this title and the annual income limitations prescribed in subsections (b)(3), (c)(3), and (d)(3) of such section, as such rates and limitations were in effect immediately prior to the date of such increase in benefit amounts payable under title II of the Social Security Act, by the same percentage as the percentage by which such benefit amounts are increased.

(2)(A) Whenever there is an increase under paragraph (1) of this subsection in such rates and annual income limitations, the Administrator shall, effective on the date of such increase in such rates and limitations, adjust (as provided in subparagraph (B) of this paragraph) the rates of dependency and indemnity compensation payable under subsection (b)(1) or (c)(1) of section 415 of this title to any parent whose annual income is more than $800 but not more than the annual income limitation in effect under subsection (b)(3) or (c)(3) of such section, as appropriate, and adjust the rates of such compensation payable under subsection (d)(1) of such section to any parent whose annual income is more than $1,000 but not more than the annual income limitation in effect under subsection (d)(3) of such section.

(B) The adjustment in rates of dependency and indemnity compensation referred to in subparagraph (A) of this paragraph shall be made by the Administrator in accordance with regulations which the Administrator shall prescribe.

(c)(1) Whenever there is an increase under subsection (a) in benefit rates payable under sections 521, 541, and 542 of this title and an increase under subsection (b) in benefit rates and annual income limitations under section 415 of this title, the Administrator shall publish such rates and limitations (including those rates adjusted by the Administrator under subsection (b)(2) of this section), as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) is published by reason of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(2) Whenever such rates and income limitations are so increased, the Administrator may round such rates and income limitations in such manner as the Administrator considers equitable and appropriate for ease of administration.

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

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§5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community:

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

The Administrator may determine the geographical limitations of a medical community as used in this section.

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment. Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Veterans' Administration health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Veterans' Administration health care facility shall apply to veterans treated hereunder.

(d) When a Veterans' Administration health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment, in accordance with—

(1) rates prescribed by the Secretary of Health and Human Services, after consultation with the Administrator, and

(2) procedures jointly prescribed by the Secretary and the Administrator to assure reasonable quality of care and services and efficient and economical utilization of resources,

to such facility therefor or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include—

(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

(2) recommendations for the improvement or more effective administration of such activities.

* * * * * * *

§5056. Coordination with health services development activities carried out under the National Health Planning and Resources Development Act of 1974

The Administrator and the Secretary of Health and Human Services shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under part F of title XVI of the Public Health Service Act (42 U.S.C. 300t et seq.).

* * * * * * *

[*Internal References.*—Social Security Act §§202(o); 210(a), (l), and (m); 217(b); 224(a); 901(c); and 1866(a) cite title 38; and Social Security Act title XVIII part A and §§229(a), 1814(c) and 1862(b) have footnotes referring to title 38. P.L. 90-248, §402 catchline (Vol. II, p. 562), has a footnote to title 38. P.L. 94-581, §115(c) (Vol. II, p. 684), cites §5053(d) of title 38.]

REVISED STATUTES OF THE UNITED STATES

2d EDITION, 1878[1]

[CONTRACTS]

SEC. 3709. [41 U.S.C. 5] Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $25,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)[2], (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

* * * * * * *

[*Internal References.*—Social Security Act §§1842(b) and 1886(e) cite the Revised Statutes.]

56th Congress, Ch. 872, Approved March 3, 1901 (31 Stat. 1449)
National Bureau of Standards Act

* * * * * * *

SEC. 20. [15 U.S.C. 278g-3]

* * * * * * *

(d) As used in this section—

(1) the term "computer system"—

(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

(B) includes—

(i) computers;

(ii) ancillary equipment;

(iii) software, firmware, and similar procedures;

(iv) services, including support services; and

(v) related resources as defined by regulations issued by the Administrator for General Services pursuant to section 111 of the Federal Property and Administrative Services Act of 1949;

(2) the term "Federal computer system"—

(A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

(B) includes automatic data processing equipment as that term is defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949;

(3) the term "operator of a Federal computer system" means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

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[1]Approved March 2, 1861, chapter 84, §10, 12 Stat. 220. P.L. 79-600, §9, revised §3709 of the Revised Statutes of the United States, in its entirety, effective August 2, 1946, 60 Stat. 809.
The provision has been further amended.
[2]See 40 U.S.C. §§471 et seq.

(4) the term "sensitive information" means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

(5) the term "Federal agency" has the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949.[1]

* * * * * * *

SEC. 23. This Act may be cited as the National Bureau of Standards Act.[2]

[*Internal Reference.*—P.L. 100-235 (Vol. II, p. 884) has a footnote referring to 56th Congress, Ch. 872, §20(d).]

P.L. 67-85, Approved November 2, 1921 (42 Stat. 208)
[Act of November 2, 1921]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 13] That the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

Notwithstanding any other provision of this Act or any other law, postsecondary schools administered by the Secretary of the Interior for Indians, and which meet the definition of an "institution of higher education" under section 1201 of the Higher Education Act of 1965, shall be eligible to participate in and receive appropriated funds under any program authorized by the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

[*Internal Reference.*—Social Security Act §1611(c) cites the Act of November 2, 1921 (42 Stat. 208).]

P.L. 71-10, Approved June 15, 1929 (46 Stat. 11)
Agricultural Marketing Act

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SEC. 15. [12 U.S.C. 1141j]

* * * * * * *

(g) "Agricultural commodity" defined. As used in this Act, the term "agricultural commodity" includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original

[1] P.L. 100-235, §3(2), added this section.
[2] P.L. 100-235, §3(3), added §23.

producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923.

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[*Internal Reference.*—Social Security Act §210(f) cites the Agricultural Marketing Act, as amended.]

P.L. 71-420, Approved June 10, 1930 (46 Stat. 531)
Perishable Agricultural Commodities Act, 1930

* * * * * * *

SEC. 14. [7 U.S.C. 499n] (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C. Supp. 2, secs. 1 to 17(a)), as prima-facie evidence of the truth of the statements therein contained;[1]

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., sec. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

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[*Internal Reference.*—Social Security Act §218(b) cites the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n).]

P.L. 71-798, Approved March 3, 1931 (46 Stat. 1494)[1]
[Davis-Bacon Act]

* * * * * * *

SEC. 1. [40 U.S.C. 276a] (a) That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the

[1] As in original. Semicolon should be replaced by a period.
[1] P.L. 74-403, §1 (49 Stat. 1011), amended P.L. 71-798 in its entirety.

geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) the basic hourly rate of pay; and

(2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforcible commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits:

Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as this Act and other Acts incorporating this Act by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforcible commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under this Act, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

SEC. 2. [40 U.S.C. 276a-1] Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said

required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

SEC. 3. [40 U.S.C. 276a-2] (a) The Comptroller General of the United States is hereby authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

SEC. 4. [40 U.S.C. 276a-3] This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

SEC. 5. [40 U.S.C. 276a-4] This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act[2].

SEC. 6. [40 U.S.C. 276a-5] In the event of a national emergency the President is authorized to suspend the provisions of this Act.

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[*Internal Reference.*—P.L. 91-648, §208(h), cites the Davis-Bacon Act (40 U.S.C. 276 et seq.).]

P.L. 73-30, Approved June 6, 1933 (48 Stat. 113)
Wagner-Peyser Act

SECTION 1. [29 U.S.C. 49] In order to promote the establishment and maintenance of a national system of public employment offices, the United States Employment Service shall be established and maintained within the Department of Labor.

SEC. 2. [29 U.S.C. 49a] For purposes of this Act—

(1) the term "chief elected official or officials" has the same meaning given that term under the Job Training Partnership Act;

(2) the term "private industry council" has the same meaning given that term under the Job Training Partnership Act;

(3) the term "Secretary" means the Secretary of Labor;

(4) the term "service delivery area" has the same meaning given that term under the Job Training Partnership Act; and

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

SEC. 3. [29 U.S.C. 49b] (a) The United States Employment Service shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.

(b) It shall be the duty of the Secretary of Labor to assure that unemployment insurance and employment service offices in each State, as appropriate, upon request of a public agency administering or supervising the administration of a State plan

[2]August 30, 1935 (P.L. 74-403, 49 Stat. 1011).

approved under part A of title IV of the Social Security Act, of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), shall (and, notwithstanding any other provision of law, is authorized to) furnish to such agency making the request, from any data contained in the files of any such office, information with respect to any individual specified in the request as to (1) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (2) the current (or most recent) home address of such individual, and (3) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

SEC. 4. [29 U.S.C. 49c] In order to obtain the benefits of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act.

SEC. 5. [29 U.S.C. 49d] (a) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts from time to time as the Congress may deem necessary to carry out the purposes of this Act.

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which—

(1) except in the case of Guam, has an unemployment compensation law approved by the Secretary under the Federal Unemployment Tax Act and is found to be in compliance with section 303 of the Social Security Act, as amended,

(2) is found to have coordinated the public employment services with the provision of unemployment insurance claimant services, and

(3) is found to be in compliance with this Act,

such amounts as the Secretary determines to be necessary for allotment in accordance with section 6.

(c)(1) Beginning with fiscal year 1985 and thereafter appropriations for any fiscal year for programs and activities assisted or conducted under this Act shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

(2) Funds obligated for any program year may be expended by the State during that program year and the two succeeding program years and no amount shall be deobligated on account of a rate of expenditure which is consistent with the program plan.

(3)(A) Appropriations for fiscal year 1984 shall be available both to fund activities for the period between October 1, 1983, and July 1, 1984, and for the program year beginning July 1, 1984.

(B) There are authorized to be appropriated such additional sums as may be necessary to carry out the provisions of this paragraph for the transition to program year funding.

SEC. 6. [29 U.S.C. 49e] (a) From the amounts appropriated pursuant to section 5 for each fiscal year, the Secretary shall first allot to Guam and the Virgin Islands an amount which, in relation to the total amount available for the fiscal year, is equal to the allotment percentage which each received of amounts available under this Act in fiscal year 1983.

(b)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the Secretary shall allot the remainder of the sums appropriated and certified pursuant to section 5 of this Act for each fiscal year among the States as follows:

(A) two-thirds of such sums shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State as compared to the total number of such individuals in all States; and

(B) one-third of such sums shall be allotted on the basis of the relative number of unemployed individuals in each State as compared to the total number of such individuals in all States.

For purposes of this paragraph, the number of individuals in the civilian labor force and the number of unemployed individuals shall be based on data for the most recent calendar year available, as determined by the Secretary of Labor.

(2) No State's allotment under this section for any fiscal year shall be less than 90 percent of its allotment percentage for the fiscal year preceding the fiscal year for which the determination is made. For the purpose of this section, the Secretary shall determine the allotment percentage for each State (including Guam and the Virgin Islands) for fiscal year 1984 which is the percentage that the State received under this Act for fiscal year 1983 of the total amounts available for payments to all States for such fiscal year. For each succeeding fiscal year, the allotment percentage for each

such State shall be the percentage that the State received under this Act for the preceding fiscal year of the total amounts available for allotments for all States for such fiscal year.

(3) For each fiscal year, no State shall receive a total allotment under paragraphs (1) and (2) which is less than 0.28 percent of the total amount available for allotments for all States.

(4) The Secretary shall reserve such amount, not to exceed 3 percent of the sums available for allotments under this section for each fiscal year, as shall be necessary to assure that each State will have a total allotment under this section sufficient to provide staff and other resources necessary to carry out employment service activities and related administrative and support functions on a statewide basis.

(5) The Secretary shall, not later than March 15 of fiscal year 1983 and each succeeding fiscal year, provide preliminary planning estimates and shall, not later than May 15 of each such fiscal year, provide final planning estimates, showing each State's projected allocation for the following year.

SEC. 7. [29 U.S.C. 49f] (a) Ninety percent of the sums allotted to each State pursuant to section 6 may be used—

(1) for job search and placement services to job seekers including counseling, testing, occupational and labor market information, assessment, and referral to employers;

(2) for appropriate recruitment services and special technical services for employers; and

(3) for any of the following activities:

(A) evaluation of programs;

(B) developing linkages between services funded under this Act and related Federal or State legislation, including the provision of labor exchange services at education sites;

(C) providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures;

(D) developing and providing labor market and occupational information;

(E) developing a management information system and compiling and analyzing reports therefrom; and

(F) administering the work test for the State unemployment compensation system and providing job finding and placement services for unemployment insurance claimants.

(b) Ten percent of the sums allotted to each State pursuant to section 6 shall be reserved for use in accordance with this subsection by the Governor of each such State to provide—

(1) performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered employment, retention, and other appropriate factors;

(2) services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate private industry council and chief elected official or officials or other public agencies or private nonprofit organizations; and

(3) the extra costs of exemplary models for delivering services of the types described in subsection (a).

(c) In addition to the services and activities otherwise authorized by this Act, the United States Employment Service or any State agency designated under this Act may perform such other services and activities as shall be specified in contracts for payment or reimbursement of the costs thereof made with the Secretary of Labor or with any Federal, State, or local public agency, or administrative entity under the Job Training Partnership Act, or private nonprofit organization.

SEC. 8. [29 U.S.C. 49g] (a) Any State desiring to receive the benefits of this Act shall, by the agency designated to cooperate with the United States Employment Service, submit to the Secretary of Labor detailed plans for carrying out the provisions of this Act within such State.

(b) Prior to submission of such plans to the Secretary—

(1) the employment service shall develop jointly with each appropriate private industry council and chief elected official or officials for the service delivery area (designated under the Job Training Partnership Act) those components of such plans applicable to such area;

(2) such plans shall be developed taking into consideration proposals developed jointly by the appropriate private industry council and chief elected official or officials in the service delivery area affected;

(3) such plans shall be transmitted to the State job training coordinating council (established under such Act) which shall certify such plans if it determines (A) that the components of such plans have been jointly agreed to by the employment service and appropriate private industry council and chief elected official or officials; and (B) that such plans are consistent with the Governor's coordination and special services plan under the Job Training Partnership Act;

(4) if the State job training coordinating council does not certify that such plans meet the requirements of clauses (A) and (B) of paragraph (3), such plans shall be returned to the employment service for a period of thirty days for it to consider, jointly with the appropriate private industry council and chief elected official or officials, the council's recommendations for modifying such plans; and

(5) if the employment service and the appropriate private industry council and chief elected official or officials fail to reach agreement upon such components of such plans to be submitted finally to the Secretary, such plans submitted by the State agency shall be accompanied by such proposed modifications as may be recommended by any appropriate disagreeing private industry council and chief elected official or officials affected, and the State job training coordinating council shall transmit to the Secretary its recommendations for resolution thereof.

(c) The Governor of the State shall be afforded the opportunity to review and transmit to the Secretary proposed modifications of such plans submitted.

(d) Such plans shall include provision for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes. In those States where a State board, department, or agency exists which is charged with the administration of State laws for vocational rehabilitation of physically handicapped persons, such plans shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under this Act.

(e) If such plans are in conformity with the provisions of this Act and reasonably appropriate and adequate to carry out its purposes, they shall be approved by the Secretary of Labor and due notice of such approval shall be given to the State agency.

SEC. 9. [29 U.S.C. 49h](a)(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under this Act. The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish guidance for the proper performance of audits. Such guidance shall include a review of fiscal controls and fund accounting procedures established by States under this section.

(2) At least once every two years, the State shall prepare or have prepared an independent financial and compliance audit of funds received under this Act.

(3) Each audit shall be conducted in accordance with applicable auditing standards set forth in the financial and compliance element of the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States.

(b)(1) The Comptroller General of the United States shall evaluate the expenditures by States of funds received under this Act in order to assure that expenditures are consistent with the provisions of this Act and to determine the effectiveness of the State in accomplishing the purposes of this Act. The Comptroller General shall conduct evaluations whenever determined necessary and shall periodically report to the Congress on the findings of such evaluations.

(2) Nothing in this Act shall be deemed to relieve the Inspector General of the Department of Labor of his responsibilities under the Inspector General Act.

(3) For the purpose of evaluating and reviewing programs established or provided for by this Act, the Comptroller General shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody, or control of the State.

(c) Each State shall repay to the United States amounts found not to have been expended in accordance with this Act. No such finding shall be made except after notice and opportunity for a fair hearing. The Secretary may offset such amounts against any other amount to which the recipient is or may be entitled under this Act.

SEC. 10. [29 U.S.C. 49i] (a) Each State shall keep records that are sufficient to permit the preparation of reports required by this Act and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully.

(b)(1) The Secretary may investigate such facts, conditions, practices, or other matters which the Secretary finds necessary to determine whether any State receiving funds under this Act or any official of such State has violated any provision of this Act.

(2)(A) In order to evaluate compliance with the provisions of this Act, the Secretary shall conduct investigations of the use of funds received by States under this Act.

(B) In order to insure compliance with the provisions of this Act, the Comptroller General of the United States may conduct investigations of the use of funds received under this Act by any State.

(3) In conducting any investigation under this Act, the Secretary or the Comptroller General of the United States may not request new compilation of information not readily available to such State.

(c) Each State receiving funds under this Act shall—

(1) make such reports concerning its operations and expenditures in such form and containing such information as shall be prescribed by the Secretary, and

(2) establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring, and evaluating purposes.

SEC. 11. [29 U.S.C. 49j] (a) The director shall establish a Federal Advisory Council composed of men and women representing employers and employees in equal numbers and the public for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution of such problems. Members of such council shall be selected from time to time in such manner as the director shall prescribe and shall serve without compensation, but when attending meetings of the council they shall be allowed necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law for civilian employees in the executive branch of the Government. The council shall have access to all files and records of the United States Employment Service. The director shall also require the organization of similar State advisory councils composed of men and women representing employers and employees in equal numbers and the public. Nothing in this section shall be construed to prohibit the Governor from carrying out functions of such State advisory council through the State job training coordinating council in accordance with section 122(c) of the Job Training Partnership Act.

(b) In carrying out the provisions of this Act the director is authorized and directed to provide for the giving of notice of strikes or lockouts to applicants before they are referred to employment.

SEC. 12. [29 U.S.C. 49k] The director, with the approval of the Secretary of Labor, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 13. [29 U.S.C. 49l] (a) The Secretary is authorized to establish performance standards for activities under this Act which shall take into account the differences in priorities reflected in State plans.

(b)(1) Nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee.

(2) No funds paid under this Act may be used by any State for advertising in newspapers for high paying jobs unless such State submits an annual report to the Secretary beginning in December 1984 concerning such advertising and the justifications therefor, and the justification may include that such jobs are part of a State industrial development effort.

SEC. 14. [29 U.S.C. 49l-1] There are authorized to be appropriated such sums as may be necessary to enable the Secretary to provide funds through reimburseable[1] agreements with the States to operate statistical programs which are essential for development of estimates of the gross national product and other national statistical series, including those related to employment and unemployment.

SEC. 15. [29 U.S.C. 49 note] This Act may be cited as the "Wagner-Peyser Act".

[*Internal References.*—Social Security Act §901(c) cites "the Act of June 6, 1933, as amended". Footnotes referring to the Wagner-Peyser Act are at Social Security Act §403 catchline and at title IV, Part A (at §401) and Part D (at §451) and §901(c).]

P.L. 73-479, Approved June 27, 1934 (48 Stat. 1246)
National Housing Act[1]

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[1]As in original. Probably should be "reimbursable".

[1]See P.L. 94-375, §2(h), with respect to exclusion of assistance from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act, in Vol. II, p. 673.

HOUSING FOR ELDERLY PERSONS

SEC. 231. [12 U.S.C. 1715v] (a) The purpose of this section is to assist in relieving the shortage of housing for elderly persons and to increase the supply of rental housing for elderly persons.

For the purposes of this section—

(1) the term "housing" means eight or more new or rehabilitated living units, not less than 50 per centum of which are specially designed for the use and occupancy of elderly persons;

(2) the term "elderly person" means any person, married or single, who is sixty-two years of age or over; and

(3) the terms "mortgage", "mortgagee", "mortgagor", and "maturity date" shall have the meanings respectively set forth in section 207 of this Act.

(b) The Secretary is authorized to insure any mortgage (including advances on mortgages during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgages prior to the date of their execution or disbursement thereon.

* * * * * * *

(f) Notwithstanding any of the provisions of this section, the housing provided under this section may include family units which are specially designed for the use and occupancy of any person or family qualifying as a handicapped family as defined in section 202 of the Housing Act of 1959[3], and such special facilities as the Secretary deems adequate to serve handicapped families (as so defined). The Secretary may also prescribe procedures to secure to such families preference or priority of opportunity to rent the living units specially designed for their use and occupancy.

* * * * * * *

HOMEOWNERSHIP FOR LOWER INCOME FAMILIES

SEC. 235. [12 U.S.C. 1715z] (a)(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available, the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower-income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 2 of this Act covering such loan, advance of credit, or obligation has been granted to such institution.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

[3]P.L. 86-372 (73 Stat. 654), approved September 23, 1959. See Vol. II, p. 473.

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 2 of this Act due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 2 of this Act which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed, under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

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RENTAL AND COOPERATIVE HOUSING FOR LOWER INCOME FAMILIES

SEC. 236. [12 U.S.C. 1715z-1] (a) For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to morgagees[3] holding mortgages meeting the special requirements specified in this section.

* * * * * * *

(j) * * *

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

* * * * * * *

SPECIAL MORTGAGE INSURANCE ASSISTANCE

SEC. 237. [12 U.S.C. 1715z-2] (a) The purpose of this section is to help provide adequate housing for families of low and moderate income, including those who, for reasons of credit history, irregular income patterns caused by seasonal employment, or other factors, are unable to meet the credit requirements of the Secretary for the purchase of a single-family home financed by a mortgage insured under section 203, 220, 221, 234, or 235(j)(4), but who, through the incentive of homeownership and counseling assistance, appear to be able to achieve homeownership.

(b) The Secretary is authorized upon application by the mortgagee to insure under this section any mortgage meeting the requirements of this section.

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[*Internal References.*— Social Security Act §§402(a), 1612(b), and 1613(a) have footnotes referring to P.L. 73-479. P.L. 86-372, §202(c), (Vol. II, p. 475), cites §513(e)(2) and (f) through (j) and §202(d)(3) and (e) cite §231; P.L. 89-73, §203(b), (Vol. II, p. 538), cites §§231 and 232; P.L. 94-375, §2(h), (Vol. II, p. 673), cites the National Housing Act and P.L. 98-181, §221 (Vol. II, p. 773) cites §236.]

P.L. 75-162, Approved June 24, 1937 (50 Stat. 307)[1]
Railroad Retirement Act of 1974

DEFINITIONS

SECTION 1. [45 U.S.C. 231] For the purposes of this Act—

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[3]As in original. Probably should be "mortgagees".
[1]P.L. 93-445, §101, amended the Railroad Retirement Act of 1937 in its entirety.

* * * * * * *

(b)(1) The term "employee" means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however*, That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) on or after August 29, 1935.

(2) The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

* * * * * * *

(o) An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this Act begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 2(b) and section 2(d) only, an individual shall be deemed also to have "a current connection with the railroad industry" if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this Act and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For purposes of section 2(d) only, an individual shall be deemed to have a "current connection with the railroad industry" if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 2(d) only, an individual shall be deemed also to have a "current connection with the railroad industry" if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

* * * * * * *

ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. [45 U.S.C. 231a] (a)(1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained retirement age (as defined in section 216(l) of the Social Security Act);

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(l) of the Social Security Act). If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(l) of the Social Security Act), his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1);

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however*, That in cases where an individual's annuity under subsection (a)(1) begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1).

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(l) of the Social Security Act), or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(l) of the Social Security Act) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse

or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this Act, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) began.

(4) The "divorced wife" (as defined in section 216(d) of the Social Security Act) of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(l) of the Social Security Act and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act;

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 4 of this Act.

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) began;

(ii) a widow (as defined in section 216(c) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216(e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death;

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees' death and (C) will not have remarried after the employee's death: *Provided, however*, That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the

benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in "employment" as defined in the Social Security Act; and

(v) The[3] widow (as defined in section 216(c) of the Social Security Act), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3) and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(i) of this Act and an individual entitled to an annuity under section 2(d)(1)(ii) of this Act, and the reference in section 202(e)(3) and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(iii) or section 2(d)(1)(iv) of this Act, and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act shall include an individual entitled to an annuity under section 2(a)(1) of this Act.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[3] of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e)(1) No individual shall be entitled to an annuity under subsection (a)(1) until he shall have ceased to render compensated service to[4] an employer as defined in section

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[3]As in original. Probably should be "the".
[3]As in original. Probably should be "202(d)(7)(C)(i)".
[4]P.L. 100-647, §7302(a)(1)(A), struck out "any person, whether or not".

1(a)[5].

(2) An annuity under subsection (a)(1) shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer[6]: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) prior to attaining retirement age (as defined in section 216(l) of the Social Security Act): *Provided further*, That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) or supplemental annuity under subsection (b)(1) shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer[7]. Individuals receiving annuities under subsection (a)(1) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(l) of the Social Security Act) and is paid more than $400 in earnings (after deduction of disability related work expenses)[8] from employment or self-employment of any form: *Provided, however*, That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(l) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed $4,800 (after deduction of disability related work expenses)[9], the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $4,800 (after deduction of disability related work expenses)[10], the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $400[11] of such excess, treating the last $200[12] or more of such excess as $400[13]; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse or divorced wife under subsection (c) shall, with respect to any month, be subject to the same provisions of this subsection as the individual's

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[5]P.L. 100-647, §7302(a)(1)(B), struck out "(but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f)). As used in this subsection, the term 'compensated service' shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State".

[6]P.L. 100-647, §7302(a)(2), struck out "and of the person, or persons, by whom he was last employed".

[7]P.L. 100-647, §7302(a)(3), struck out "or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue".

[8]P.L. 100-647, §7303(a)(1), struck out "$200 in earnings" and substituted "$400 in earnings (after deduction of disability related work expenses)".

[9]P.L. 100-647, §7303(a)(2), struck out "$2,400" and substituted "$4,800 (after deduction of disability related work expenses)".

[10]See footnote 9.

[11]P.L. 100-647, §7303(a)(3), struck out "$200" and substituted "$400".

[12]P.L. 100-647, §7303(a)(4), struck out "$100" and substituted "$200".

[13]See footnote 11.

annuity. In addition, the annuity of a spouse or divorced wife under subsection (c) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however*, That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act.

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 3(a) of this Act for any month in which the annuity of such individual is reduced pursuant to section 3(m) of this Act. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 4(a) of this Act for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act.

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(6)(A) Except as provided in subparagraph (B)—

(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) began to accrue.

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.[14]

(g)(1) No annuity shall be paid to a survivor under subsection (d) with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d)

[14]P.L. 100-647, §7302(b), added paragraph (6).

until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of such Act: *Provided, however,* That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(2)[15] The supplemental annuity provided an individual by subsection (b) shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however,* That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *Provided, however,* That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. [45 U.S.C. 231b] (a)(1) The annuity of an individual under section 2(a)(1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

(3) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such

[15] As in original. P.L. 98-76, §414(a)(1), struck out paragraph (1) and §414(a)(2), inserted "(h)".

individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

* * * * * * *

(f) * * *

(3) If for any month in which an annuity accrues and is payable under this Act the annuity to which an individual is entitled under this Act (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act, the annuities of the individual and spouse shall be increased proportionately to such total amount, or such additional amount: *Provided, however,* That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 2 of this Act shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 2(c) of this Act if the individual from whom the spouse's annuity under this Act would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216(e) of the Social Security Act; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 2 of this Act except a spouse who could qualify for an annuity under section 2(c) of this Act when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act which shall be considered shall be those to which the persons included in the computation are entitled.

* * * * * * *

(i)(1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of any individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of

an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) The "average monthly compensation" shall be computed in the manner specified in section 3(b) of this Act, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924-1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however,* That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing[16] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking

[16] As in original. Possibly should be "determining".

such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

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COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. [45 U.S.C. 231c] (a)(1) The annuity of a spouse or divorced wife of an individual under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, if an individual is entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which did not begin to accrue before such individual attained retirement age (as defined in section 216(l) of the Social Security Act, the spouse of such individual entitled to an annuity under clause (B) of paragraph (ii) of section 2(c)(1) of this Act shall be deemed to have attained retirement age (as defined in section 216(l) of the Social Security Act.

(3) In the case of an individual entitled to an annuity under section 2(a)(1)(ii) of this Act which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 2(c) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 3(a)(3)(i) of this Act, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(4) In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act, the annuity of the spouse of such individual entitled to an annuity under section 2(c)(1)(ii)(B) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62.

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(f)(1) The annuity of a survivor of a deceased employee under section 2(d) of this Act shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. In the case of a widow or

widower who is entitled to an annuity under section 2(d) of this Act solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 2(d)(1) of this Act and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 2(d)(1) on the basis of disability for the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 2(d)(1) of this Act on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability, and

(iii) The[17] provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

(3) The annuity amount provided to a widow or widower under last sentence of subdivision (1) shall be increased by the same percentage or percentages as insurance benefits payable under section 202 of the Social Security Act are increased after the date on which such annuity begins to accrue.

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LUMP-SUM PAYMENTS

SEC. 6. [45 U.S.C. 231e]

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(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore[18] be entitled to receive an annuity under section 2(d) of this Act for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, surviving divorced wife, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall

[17] As in original. Probably should be "the".
[18] As in original. Should be "therefor".

then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 2(d) of this Act was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

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POWERS AND DUTIES OF THE BOARD

SEC. 7. [45 U.S.C. 231f]

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(b) * * *

(7) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act, the Railroad Unemployment Insurance Act,,[19] the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act..[20] The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however*, That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

* * * * * * *

(d)(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 3(f)(3) of this Act, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includible in the computation of an annuity under section 3(f)(3) of this Act, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

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[19] As in original. One comma should be stricken.
[20] As in original. One period should be stricken.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

* * * * * * *

CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. [45 U.S.C. 231q]

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(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

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[*Internal References.*—Social Security Act §§202(t); 205(c) and (i); 215(a) and (d); and 228(h) cite the Railroad Retirement Act of 1937; §§202(l) and (t); 205(c), (i), and (o); 210(l); 215(a) and (d); 216(b), (c), (f), and (g); 226(b), (d), and (f); 226A(a); 1839(f); 1840(b); 1842(g); 1843(b) and (d); 1870(b); and 1874(a) cite the Railroad Retirement Act of 1974; and Social Security Act §228(h) has a footnote referring to P.L. 75-162.]

P.L. 75-353, Approved August 24, 1937 (50 Stat. 754)
Act of August 24, 1937
[Unemployment Compensation]

AN ACT

To make available to each State which enacted in 1937 an approved unemployment-compensation law a portion of the proceeds from the Federal employers' tax in such State for the year 1936.

[42 U.S.C. 1104 note] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby authorized to be appropriated for payment to the unemployment fund of each State or Territory which was not certified by the Social Security Board under section 903 of the Social Security Act on December 31, 1936, but which enacted in the year 1937 an unemployment-compensation law approved by the Social Security Board under such section, an amount equal to 90 per centum of the proceeds of the tax paid on or before January 31, 1938, with respect to employment in such State or Territory during the calendar year 1936 under title IX of such Act. Out of the sums appropriated therefor, the Secretary of the Treasury shall pay such amount, through the Division of Disbursement of the Treasury Department, to each such State unemployment fund. The terms used in this Act shall have the same meaning as identical terms in title IX of the Social Security Act.

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[*Internal Reference.*—Social Security Act §904(g) cites the Act of August 24, 1937 (50 Stat. 754).]

P.L. 75-412, Approved September 1, 1937 (50 Stat. 888)
United States Housing Act of 1937[1]

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SEC. 3. [42 U.S.C. 1437a]

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(b) When used in this Act:

(1) The term "lower income housing" means decent, safe, and sanitary dwellings assisted under this chapter. The term "public housing" means lower income housing, and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. When used in reference to public housing, the term "lower income housing project" or "project" means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term "lower income families" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means lower income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 520 of the Housing Act of 1949, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

(3) The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age,[2] is under a disability as defined in

[1] P.L. 93-383, §201(a), amended the United States Housing Act of 1937 in its entirety.
[2] P.L. 100-242, §170(c)(1), struck out "or" and substituted a comma.

section 423 of this title, has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7))[3], or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family, and (D) other single persons in circumstances described in regulations of the Secretary. In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D). In determining priority for admission to housing under this chapter, the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under clause (D). The term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this subsection, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with one or more persons determined under regulations of the Secretary to be essential to their care or well being. The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D). In determining priority for admission to public housing projects designed for elderly families, the public housing agency shall give preference to such families.[4] When the public housing agency determines (in accordance with regulations of the Secretary) that there are insufficient numbers of elderly families to fill all the units in such a project, the agency may give preference to families in which the head of household (or spouse) is at least 50 years of age but below the age of 62 before those in which the head of household and spouse, if any, are below the age of 50.[5]

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture.

(5) The term "adjusted income" means the income which remains after excluding—

(A) $480 for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) $400 for any elderly family;

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any elderly family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed; and

(D)(i)[6] child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel, except that this clause shall apply only to families assisted by Indian housing authorities[7].

(6) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of lower income housing. The term includes any Indian housing authority.[8]

(7) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes[9].

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[3]P.L. 100-242, §170(c)(2), struck out "or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970" and substituted ", has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7))".

[4]P.L. 100-242, §111, added this sentence.

[5]See footnote 4.

[6]P.L. 100-358, §4(a)(1), inserted "(i)".

[7]P.L. 100-358, §4(a)(2), inserted "; or" and clause (ii).

[8]P.L. 100-358, §4(b), added this sentence.

[9]P.L. 100-358, §4(c), struck out ", bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States".

(8) The term "Secretary" means the Secretary of Housing and Urban Development.
(9) The term "Indian" means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.[10]
(10) The term "Indian area" means the area within which an Indian housing authority is authorized to provide lower income housing.[11]
(11) The term "Indian housing authority" means any entity that—
(A) is authorized to engage in or assist in the development or operation of lower income housing for Indians; and
(B) is established—
(i) by exercise of the power of self-government of an Indian tribe independent of State law; or
(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.[12]
(12) The term "Indian tribe" means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.[13]

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SEC. 8.

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(j)(1) [42 U.S.C. 1437f] The Secretary may enter into contracts to make assistance payments under this subsection to assist lower income families by making rental assistance payments on behalf of any such family which utilizes a manufactured home as its principal place of residence. Such payments may be made with respect to the rental of the real property on which there is located a manufactured home which is owned by any such family or with respect to the rental by such family of a manufactured home and the real property on which it is located. In carrying out this subsection, the Secretary may—
(A) enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make such assistance payments to the owners of such real property, or
(B) enter into such contracts directly with the owners of such real property.
(2)(A) A contract entered into pursuant to this paragraph shall establish the maximum monthly rent (including maintenance and management charges) which the owner is entitled to receive for the space on which a manufactured home is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of real property suitable for occupancy by families assisted under this paragraph.
(B) The amount of any monthly assistance payment with respect to any family which rents real property which is assisted under this paragraph, and on which is located a manufactured home which is owned by such family shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—
(i) the monthly payment made by such family to amortize the cost of purchasing the manufactured home;
(ii) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and
(iii) the maximum monthly rent permitted with respect to the real property which is rented by such family for the purpose of locating its manufactured home;
except that in no case may such assistance exceed the total amount of such maximum monthly rent.
(3)(A) Contracts entered into pursuant to this paragraph shall establish the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of a manufactured home and the real property on which it is located suitable for occupancy by families assisted under this paragraph, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent.

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[10] P.L. 100-358, §4(d), added paragraph (9).
[11] P.L. 100-358, §4(e), added paragraph (10).
[12] P.L. 100-358, §4(f), added paragraph (11).
[13] P.L. 100-358, §4(g), added paragraph (12).

(B) The amount of any monthly assistance payment with respect to any family which rents a manufactured home and the real property on which it is located and which is assisted under this paragraph shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—

(i) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(ii) the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located.

(4) The provisions of subsection (c)(2) of this section shall apply to the adjustments of maximum monthly rents under this subsection.

(5) Each contract entered into under this subsection shall be for a term of not less than one month and not more than 180 months, except that in any case in which the manufactured home park is substantially rehabilitated or newly constructed, such term may not be less than 240 months, nor more than the maximum term for a manufactured home loan permitted under section 2(b) of the National Housing Act.

(6) The Secretary may carry out this subsection without regard to whether the manufactured home park is existing, substantially rehabilitated, or newly constructed.

(7) In the case of any substantially rehabilitated or newly constructed manufactured home park containing spaces with respect to which assistance is made under this subsection, the principal amount of the mortgage attributable to the rental spaces within the park may not exceed an amount established by the Secretary which is equal to or less than the limitation for manufactured home parks described in section 207(c)(3) of the National Housing Act, and the Secretary may increase such limitation in high cost areas in the manner described in such section.

(8) The Secretary may prescribe other terms and conditions which are necessary for the purpose of carrying out the provisions of this subsection and which are consistent with the purposes of this subsection.

(k) The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act, the Food Stamp Act of 1977, or title 38, United States Code. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

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SEC. 9.

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(b) [42 U.S.C. 1437g] The aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a public housing agency receiving annual contributions under this section shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

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[*Internal References.*—Social Security Act §§303(i) and 1612(b) cite the United States Housing Act of 1937; §§402(a), 1612(b), and 1613(a) have footnotes referring to P.L. 75-412. P.L. 89-73, §203(b)(5) (Vol. II, p. 538), P.L. 94-375, §2(h) (Vol. II, p. 673), and P.L. 98-181, §221 (Vol. II, p. 773) cite the United States Housing Act of 1937.]

P.L. 75-717, Approved June 25, 1938 (52 Stat. 1040)
Federal Food, Drug, and Cosmetic Act

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SEC. 201. [21 U.S.C. 321] For the purposes of this Act—

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(p) The term "new drug" means—

(1) Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this Act it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or

(2) Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

* * * * * * *

PROHIBITED ACTS

SEC. 301. [21 U.S.C. 331] The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 404 or 505.

(e) The refusal to permit access to or copying of any record as required by section 412 or 703; or the failure to establish or maintain any record, or make any report, required under section 412, 505(i) or (j), 507(d) or (g), 512(j), (l) or (m),,[1] 515(f), or 519 or the refusal to permit access to or verification or copying of any such required record.

(f) The refusal to permit entry or inspection as authorized by section 704.

(g) The manufacture within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 303(c)(2), which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 303(c)(3), which guaranty or undertaking is false.

(i)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 404, 506, 507, or 706.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

(j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority of section 404, 409, 412, 505, 506, 507, 510, 512, 513, 514, 515, 516, 518, 519, 520, 704, 706, or 708 concerning any method or process which as a trade secret is entitled to protection.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

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[1] As in original. One comma should be stricken.

(l) The using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under section 505, 515, or 520(g), as the case may be, or that such drug or device complies with the provisions of such section.

(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of section 407(b), or 407(c).

(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 704.

(o) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Act.

(p) The failure to register in accordance with section 510, the failure to provide any information required by section 510(j) or 510(k), or the failure to provide a notice required by section 510(j)(2).

(q)(1) The failure or refusal to (A) comply with any requirement prescribed under section 518 or 520(g), or (B) furnish any notification or other material or information required by or under section 519 or 520(g).

(2) With respect to any device, the submission of any report that is required by or under this Act that is false or misleading in any material respect.

(r) The movement of a device in violation of an order under section 304(g) or the removal or alteration of any mark or label required by the order to identify the device as detained.

(s) The failure to provide the notice required by section 412(c) or 412(d), the failure to make the reports required by section 412(f)(1)(B), the failure to retain the records required by section 412(b)(4), or the failure to meet the requirements prescribed under section 412(f)(3).

(t) The importation of a drug in violation of section 801(d)(1), the sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 503(c), the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a coupon in violation of section 503(c)(2), the distribution of a drug sample in violation of section 503(d) or the failure to otherwise comply with the requirements of section 503(d), or the distribution of drugs in violation of section 503(e) or the failure to otherwise comply with the requirements of section 503(e).[2]

INJUNCTION PROCEEDINGS

SEC. 302. [21 U.S.C. 332] (a) The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 381), to restrain violations of section 301, except paragraphs (h), (i), and (j).

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SEIZURE

SEC. 304. [21 U.S.C. 334] (a)(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 404 or 505, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found: *Provided, however,* That no libel for condemnation shall be instituted under this Act, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this Act based upon

[2]P.L. 100-293, §7(a), added subsection (t).

the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this Act, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, and (D) Any adulterated or misbranded device.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 403(a)(2) because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)(I) the food's advertising which resulted in the food being misbranded under section 403(a)(2) was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

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MISBRANDED DRUGS AND DEVICES

SEC. 502. [21 U.S.C. 352] A drug or device shall be deemed to be misbranded—

* * * * * * *

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Secretary shall promulgate regulations exempting such drug or device from such requirement.

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NEW DRUGS

SEC. 505. [21 U.S.C. 355] (a) No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) or (j) is effective with respect to such drug.

(b)(1) Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a). Such person shall submit to the Secretary as a part of the application (A) full reports of investigations which have been made to

show whether or not such drug is safe for use and whether such drug is effective in use; (B) a full list of the articles used as components of such drug; (C) a full statement of the composition of such drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (E) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (F) specimens of the labeling proposed to be used for such drug. The applicant shall file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.

(2) An application submitted under paragraph (1) for a drug for which the investigations described in clause (A) of such paragraph and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted shall also include—

(A) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the drug for which such investigations were conducted or which claims a use for such drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under paragraph (1) or subsection (c)—

(i) that such patent information has not been filed,

(ii) that such patent has expired,

(iii) of the date on which such patent will expire, or

(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted; and

(B) if with respect to the drug for which investigations described in paragraph (1)(A) were conducted information was filed under paragraph (1) or subsection (c) for a method of use patent which does not claim a use for which the applicant is seeking approval under this subsection, a statement that the method of use patent does not claim such a use.

(3)(A) An applicant who makes a certification described in paragraph (2)(A)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

(ii) the holder of the approved application under subsection (b) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

(B) The notice referred to in subparagraph (A) shall state that an application has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of the drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

(C) If an application is amended to include a certification described in paragraph (2)(A)(iv), the notice required by subparagraph (B) shall be given when the amended application is submitted.

(c)(1) Within one hundred and eighty days after the filing of an application under subsection (b), or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

(A) approve the application if he then finds that none of the grounds for denying approval specified in subsection (d) applies, or

(B) give the applicant notice of an opportunity for a hearing before the Secretary under subsection (d) on the question whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall commence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(2) If the patent information described in subsection (b) could not be filed with the submission of an application under subsection (b) because the application was filed

before the patent information was required under subsection (b) or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the drug for which the application was submitted or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If the holder of an approved application could not file patent information under subsection (b) because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than thirty days after the date of the enactment of this sentence, and if the holder of an approved application could not file patent information under subsection (b) because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than thirty days after the date the patent involved is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.

(3) The approval of an application filed under subsection (b) which contains a certification required by paragraph (2) of such subsection shall be made effective on the last applicable date determined under the following:

(A) If the applicant only made a certification described in clause (i) or (ii) of subsection (b)(2)(A) or in both such clauses, the approval may be made effective immediately.

(B) If the applicant made a certification described in clause (iii) of subsection (b)(2)(A), the approval may be made effective on the date certified under clause (iii).

(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the cetification before the expiration of forty-five days from the date the notice provided under paragraph (3)(B) is received. If such an action is brought before the expiration of such days, the approval may be made effective upon the expiration of the thirty-month period beginning on the date of the receipt of the notice provided under paragraph (3)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that—

(i) if before the expiration of such period the court decides that such patent is invalid or not infringed, the approval may be made effective on the date of the court decision,

(ii) if before the expiration of such period the court decides that such patent has been infringed, the approval may be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

(iii) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of forty-five days from the date the notice made under paragraph (3)(B) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under such section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

(D)(i) If an application (other than an abbreviated new drug application) submitted under subsection (b) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b), was approved during the period beginning January 1, 1982, and ending on the date of the enactment of this subsection, the Secretary may not make the approval of another application for a drug for which the investigations described in clause (A) of subsection (b)(1) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted effective before the expiration of ten years from the date of the approval of the application previously approved under subsection (b).

(ii) If an application submitted under subsection (b) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been

approved in any other application under subsection (b), is approved after the date of the enactment of this clause, no application which refers to the drug for which the subsection (b) application was submitted and for which the investigations described in clause (A) of subsection (b)(1) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted may be submitted under subsection (b) before the expiration of five years from the date of the approval of the application under subsection (b), except that such an application may be submitted under subsection (b) after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (b)(2)(A). The approval of such an application shall be made effective in accordance with this paragraph except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the thirty-month period referred to in subparagraph (C) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

(iii) If an application submitted under subsection (b) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under subsection (b), is approved after the date of the enactment of this clause and if such application contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b) for the conditions of approval of such drug in the approved subsection (b) application effective before the expiration of three years from the date of the approval of the application under subsection (b) if the investigations described in clause (A) of subsection (b)(1) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and if the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

(iv) If a supplement to an application approved under subsection (b) is approved after the date of enactment of this clause and the supplement contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b) for a change approved in the supplement effective before the expiration of three years from the date of the approval of the supplement under subsection (b) if the investigations described in clause (A) of subsection (b)(1) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and if the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

(v) If an application (or supplement to an application) submitted under subsection (b) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application under subsection (b), was approved during the period beginning January 1, 1982, and ending on the date of the enactment of this clause, the Secretary may not make the approval of an application submitted under this subsection and for which the investigations described in clause (A) of subsection (b)(1) and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted and which refers to the drug for which the subsection (b) application was submitted effective before the expiration of two years from the date of enactment of this clause.

(d) If the Secretary finds, after due notice to the applicant in accordance with subsection (c) and giving him an opportunity for a hearing, in accordance with said subsection, that (1) the investigations, reports of which are required to be submitted to the Secretary pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; (4) upon the basis of the information submitted to him as part of the application, or upon

the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or (5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or (6) the application failed to contain the patent information prescribed by subsection (b); or (7) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall issue an order refusing to approve the application. If, after such notice and opportunity for hearing, the Secretary finds that clauses (1) through (6) do not apply, he shall issue an order approving the application. As used in this subsection and subsection (e), the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

(e) The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) the patent information prescribed by subsection (c) was not filed within thirty days after the receipt of written notice from the Secretary specifying the failure to file such information; or (5) that the application contains any untrue statement of a material fact: *Provided*, That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application submitted under subsection (b) or (j) with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (k) or to comply with the notice requirements of section 510(k)(2), or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

(f) Whenever the Secretary finds that the facts so require, he shall revoke any previous order under subsection (d) or (e) refusing, withdrawing, or suspending approval of an application and shall approve such application or reinstate such approval, as may be appropriate.

(g) Orders of the Secretary issued under this section shall be served (1) in person by any officer or employee of the department designated by the Secretary or (2) by mailing the order by registered mail or by certified mail addressed to the applicant or respondent at his last-known address in the records of the Secretary.

(h) An appeal may be taken by the applicant from an order of the Secretary refusing or withdrawing approval of an application under this section. Such appeal shall be taken by filing in the United States court of appeals for the circuit wherein such applicant resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall certify and file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm or set aside such order, except that until the filing of the record the Secretary may modify or set aside his order. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the original order. The judgment of the court affirming or setting aside any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(i) The Secretary shall promulgate regulations for exempting from the operation of the foregoing subsections of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the Secretary, among other conditions relating to the protection of the public health, provide for conditioning such exemption upon—

(1) the submission to the Secretary, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;

(2) the manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and

(3) the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Secretary finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Secretary reports on the investigational use of drugs.

(j)(1) Any person may file with the Secretary an abbreviated application for the approval of a new drug.

(2)(A) An abbreviated application for a new drug shall contain—

(i) information to show that the conditions of use prescribed, recommended, or suggested in the labeling proposed for the new drug have been previously

approved for a drug listed under paragraph (6) (hereinafter in this subsection referred to as a "listed drug");

(ii)(I) if the listed drug referred to in clause (i) has only one active ingredient, information to show that the active ingredient of the new drug is the same as that of the listed drug;

(II) if the listed drug referred to in clause (i) has more than one active ingredient, information to show that the active ingredients of the new drug are the same as those of the listed drug, or

(III) if the listed drug referred to in clause (i) has more than one active ingredient and if one of the active ingredients of the new drug is different and the application is filed pursuant to the approval of a petition filed under subparagraph (C), information to show that the other active ingredients of the new drug are the same as the active ingredients of the listed drug, information to show that the different active ingredient is an active ingredient of a listed drug or of a drug which does not meet the requirements of section 201(p), and such other information respecting the different active ingredient with respect to which the petition was filed as the Secretary may require;

(iii) information to show that the route of administration, the dosage form, and the strength of the new drug are the same as those of the listed drug referred to in clause (i) or, if the route of administration, the dosage form, or the strength of the new drug is different and the application is filed pursuant to the approval of a petition filed under subparagraph (C), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

(iv) information to show that the new drug is bioequivalent to the listed drug referred to in clause (i), except that if the application is filed pursuant to the approval of a petition filed under subparagraph (C), information to show that the active ingredients of the new drug are of the same pharmacological or therapeutic class as those of the listed drug referred to in clause (i) and the new drug can be expected to have the same therapeutic effect as the listed drug when administered to patients for a condition of use referred to in clause (i);

(v) information to show that the labeling proposed for the new drug is the same as the labeling approved for the listed drug referred to in clause (i) except for changes required because of differences approved under a petition filed under subparagraph (C) or because the new drug and the listed drug are produced or distributed by different manufacturers;

(vi) the items specified in clauses (B) through (F) of subsection (b)(1);

(vii) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the listed drug referred to in clause (i) or which claims a use for such listed drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b) or (c)—

(I) that such patent information has not been filed,

(II) that such patent has expired,

(III) of the date on which such patent will expire, or

(IV) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted; and

(viii) if with respect to the listed drug referred to in clause (i) information was filed under subsection (b) or (c) for a method of use patent which does not claim a use for which the applicant is seeking approval under this subsection, a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by clauses (i) through (viii).

(B)(i) An applicant who makes a certification described in subparagraph (A)(vii)(IV) shall include in the application a statement that the applicant will give the notice required by clause (ii) to—

(I) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

(II) the holder of the approved application under subsection (b) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

(ii) The notice referred to in clause (i) shall state that an application, which contains data from bioavailability or bioequivalence studies, has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

(iii) If an application is amended to include a certification described in subparagraph (A)(vii)(IV), the notice required by clause (ii) shall be given when the amended application is submitted.

(C) If a person wants to submit an abbreviated application for a new drug which has a different active ingredient or whose route of administration, dosage form, or strength differ from that of a listed drug, such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve or disapprove a petition submitted under this subparagraph within ninety days of the date the petition is submitted. The Secretary shall approve such a petition unless the Secretary finds—

(i) that investigations must be conducted to show the safety and effectiveness of the drug or of any of its active ingredients, the route of administration, the dosage form, or strength which differ from the listed drug; or

(ii) that any drug with a different active ingredient may not be adequately evaluated for approval as safe and effective on the basis of the information required to be submitted in an abbreviated application.

(3) Subject to paragraph (4), the Secretary shall approve an application for a drug unless the Secretary finds—

(A) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

(B) information submitted with the application is insufficient to show that each of the proposed conditions of use have been previously approved for the listed drug referred to in the application;

(C)(i) if the listed drug has only one active ingredient, information submitted with the application is insufficient to show that the active ingredient is the same as that of the listed drug;

(ii) if the listed drug has more than one active ingredient, information submitted with the application is insufficient to show that the active ingredients are the same as the active ingredients of the listed drug, or

(iii) if the listed drug has more than one active ingredient and if the application is for a drug which has an active ingredient different from the listed drug, information submitted with the application is insufficient to show—

(I) that the other active ingredients are the same as the active ingredients of the listed drug, or

(II) that the different active ingredient is an active ingredient of a listed drug or a drug which does not meet the requirements of section 201(p),

or no petition to file an application for the drug with the different ingredient was approved under paragraph (2)(C);

(D)(i) if the application is for a drug whose route of administration, dosage form, or strength of the drug is the same as the route of administration, dosage form, or strength of the listed drug referred to in the application, information submitted in the application is insufficient to show that the route of administration, dosage form, or strength is the same as that of the listed drug, or

(ii) if the application is for a drug whose route of administration, dosage form, or strength of the drug is different from that of the listed drug referred to in the application, no petition to file an application for the drug with the different route of administration, dosage form, or strength was approved under paragraph (2)(C);

(E) if the application was filed pursuant to the approval of a petition under paragraph (2)(C), the application did not contain the information required by the Secretary respecting the active ingredient, route of administration, dosage form, or strength which is not the same;

(F) information submitted in the application is insufficient to show that the drug is bioequivalent to the listed drug referred to in the application or, if the application was filed pursuant to a petition approved under paragraph (2)(C), information submitted in the application is insufficient to show that the active ingredients of the new drug are of the same pharmacological or therapeutic class as those of the listed drug referred to in paragraph (2)(A)(i) and that the new drug can be expected to have the same therapeutic effect as the listed drug when administered to patients for a condition of use referred to in such paragraph;

(G) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the listed drug referred to in the application except for changes required because of differences approved under a petition filed under paragraph (2)(C) or because the drug and the listed drug are produced or distributed by different manufacturers;

(H) information submitted in the application or any other information available to the Secretary shows that (i) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling

proposed for the drug, or (ii) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included;

(I) the approval under subsection (c) of the listed drug referred to in the application under this subsection has been withdrawn or suspended for grounds described in the first sentence of subsection (e), the Secretary has published a notice of opportunity for hearing to withdraw approval of the listed drug under subsection (c) for grounds described in the first sentence of subsection (e), the approval under this subsection of the listed drug referred to in the application under this subsection has been withdrawn or suspended under paragraph (5), or the Secretary has determined that the listed drug has been withdrawn from sale for safety or effectiveness reasons;

(J) the application does not meet any other requirement of paragraph (2)(A); or

(K) the application contains an untrue statement of material fact.

(4)(A) Within one hundred and eighty days of the initial receipt of an application under paragraph (2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

(B) The approval of an application submitted under paragraph (2) shall be made effective on the last applicable date determined under the following:

(i) If the applicant only made a certification described in subclause (I) or (II) of paragraph (2)(A)(vii) or in both such subclauses, the approval may be made effective immediately.

(ii) If the applicant made a certification described in subclause (III) of paragraph (2)(A)(vii), the approval may be made effective on the date certified under subclause (III).

(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of forty-five days from the date the notice provided under paragraph (2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the thirty-month period beginning on the date of the receipt of the notice provided under paragraph (2)(B)(i) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that—

(I) if before the expiration of such period the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

(II) if before the expiration of such period the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

(III) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of forty-five days from the date the notice made under paragraph (2)(B)(i) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

(iv) If the application contains a certification described in subclause (IV) of paragraph (2)(A)(vii) and is for a drug for which a previous application has been submitted under this subsection continuing such a certification, the application shall be made effective not earlier than one hundred and eighty days after—

(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

(II) the date of a decision of a court in an action described in clause (iii) holding the patent which is the subject of the certification to be invalid or not infringed,

whichever is earlier.

(C) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question

of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall commence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(D)(i) If an application (other than an abbreviated new drug application) submitted under subsection (b) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b), was approved during the period beginning January 1, 1982, and ending on the date of the enactment of this subsection, the Secretary may not make the approval of an application submitted under this subsection which refers to the drug for which the subsection (b) application was submitted effective before the expiration of ten years from the date of the approval of the application under subsection (b).

(ii) If an application submitted under subsection (b) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b), is approved after the date of the enactment of this subsection, no application may be submitted under this subsection which refers to the drug for which the subsection (b) application was submitted before the expiration of five years from the date of the approval of the application under subsection (b), except that such an application may be submitted under this subsection after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in subclause (IV) of paragraph (2)(A)(vii). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the thirty-month period referred to in subparagraph (B)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

(iii) If an application submitted under subsection (b) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under subsection (b), is approved after the date of enactment of this subsection and if such application contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under this subsection for the conditions of approval of such drug in the subsection (b) application effective before the expiration of three years from the date of the approval of the application under subsection (b) for such drug.

(iv) If a supplement to an application approved under subsection (b) is approved after the date of enactment of this subsection and the supplement contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under this subsection for a change approved in the supplement effective before the expiration of three years from the date of the approval of the supplement under subsection (b).

(v) If an application (or supplement to an application) submitted under subsection (b) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application under subsection (b), was approved during the period beginning January 1, 1982, and ending on the date of the enactment of this subsection, the Secretary may not make the approval of an application submitted under this subsection which refers to the drug for which the subsection (b) application was submitted or which refers to a change approved in a supplement to the subsection (b) application effective before the expiration of two years from the date of enactment of this subsection.

(5) If a drug approved under this subsection refers in its approved application to a drug the approval of which was withdrawn or suspended for grounds described in the first sentence of subsection (e) or was withdrawn or suspended under this paragraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this subsection shall be withdrawn or suspended—

(A) for the same period as the withdrawal or suspension under subsection (e) or this paragraph, or

(B) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

(6)(A)(i) Within sixty days of the date of the enactment of this subsection, the Secretary shall publish and make available to the public—

(I) a list in alphabetical order of the official and proprietary name of each drug which has been approved for safety and effectiveness under subsection (c) before the date of the enactment of this subsection;

(II) the date of approval if the drug is approved after 1981 and the number of the application which was approved; and

(III) whether in vitro or in vivo bioequivalence studies, or both such studies, are required for applications filed under this subsection which will refer to the drug published.

(ii) Every thirty days after the publication of the first list under clause (i) the Secretry[a] shall revise the list to include each drug which has been approved for safety and effectiveness under subsection (c) or approved under this subsection during the thirty-day period.

(iii) When patent information submitted under subsection (b) or (c) respecting a drug included on the list is to be published by the Secretary the Secretary shall, in revisions made under clause (ii), include such information for such drug.

(B) A drug approved for safety and effectiveness under subsection (c) or approved under this subsection shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or the date of enactment, whichever is later.

(C) If the approval of a drug was withdrawn or suspended for grounds described in the first sentence of subsection (e) or was withdrawn or suspended under paragraph (5) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

(i) for the same period as the withdrawal or suspension under subsection (e) or paragraph (5), or

(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

A notice of the removal shall be published in the Federal Register.

(7) For purposes of this subsection:

(A) The term "bioavailability" means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a drug and becomes available at the site of drug action.

(B) A drug shall be considered to be bioequivalent to a listed drug if—

(i) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the listed drug when administered at the same molar dose of the therapeutic ingredient under similar experimental conditions in either a single dose or multiple doses; or

(ii) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the listed drug when administered at the same molar dose of the therapeutic ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the listed drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug.

(k)(1) In the case of any drug for which an approval of an application filed under subsection (b) or (j) is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Secretary may by general regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for invoking subsection (e) of this section: *Provided, however,* That regulations and orders issued under this subsection and under subsection (i) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Secretary.

(2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated

[a]As in original. Should be "Secretary".

by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(l) Safety and effectiveness data and information which has been submitted in an application under subsection (b) for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

(1) if no work is being or will be undertaken to have the application approved,

(2) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

(3) if approval of the application under subsection (c) is withdrawn and all legal appeals have been exhausted,

(4) if the Secretary has determined that such drug is not a new drug, or

(5) upon the effective date of the approval of the first application under subsection (j) which refers to such drug or upon the date upon which the approval of an application under subsection (j) which refers to such drug could be made effective if such an application had been submitted.

(m) For purposes of this section, the term "patent" means a patent issued by the Patent and Trademark Office of the Department of Commerce.

CERTIFICATION OF DRUGS CONTAINING INSULIN

SEC. 506. [21 U.S.C. 356] (a) The Federal Security Administrator[4], pursuant to regulations promulgated by him, shall provide for the certification of batches of drugs composed wholly or partly of insulin. A batch of any such drug shall be certified if such drug has such characteristics of identity and such batch has such characteristics of strength, quality, and purity, as the Administrator prescribes in such regulations as necessary to adequately insure safety and efficacy of use, but shall not otherwise be certified. Prior to the effective date of such regulations the Administrator, in lieu of certification, shall issue a release for any batch which, in his judgment, may be released without risk as to the safety and efficacy of its use. Such release shall prescribe the date of its expiration and other conditions under which it shall cease to be effective as to such batch and as to portions thereof.

(b) Regulations providing for such certification shall contain such provisions as are necessary to carry out the purposes of this section, including provisions prescribing (1) standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates, and other conditions under which they shall cease to be effective as to certified batches and as to portions thereof; (4) administration and procedure; and (5) such fees, specified in such regulations, as are necessary to provide, equip, and maintain an adequate certification service. Such regulations shall prescribe no standard of identity or of strength, quality, or purity for any drug different from the standard of identity, strength, quality, or purity set forth for such drug in an official compendium.

(c) Such regulations, insofar as they prescribe tests or methods of assay to determine strength, quality, or purity of any drug, different from the tests or methods of assay set forth for such drug in an official compendium, shall be prescribed, after notice and opportunity for revision of such compendium, in the manner provided in the second sentence of section 501(b). The provisions of subsections (e), (f), and (g) of section 701 shall be applicable to such portion of any regulation as prescribes any such different test or method, but shall not be applicable to any other portion of any such regulation.

CERTIFICATION OF DRUGS CONTAINING PENICILLIN, STREPTOMYCIN, CHLORTETRACYCLINE, CHLORAMPHENICOL, OR BACITRACIN

SEC. 507. [21 U.S.C. 357] (a) The Federal Security Administrator, pursuant to regulations promulgated by him, shall provide for the certification of batches of drugs (except drugs for use in animals other than man) composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof. A batch of any such drug shall be certified if such drug has such characteristics of identity and such batch has such characteristics of strength, quality, and purity, as the Administrator prescribes in such regulations as necessary to adequately insure safety and efficacy of use, but shall not otherwise be certified. Prior to the effective date of such regulations the Administrator, in lieu of certification, shall issue a release for any batch which, in his

[4]Reorganization Plan No. 1 of 1953, §5, transferred all functions of the Federal Security Administrator to the Department of Health, Education, and Welfare.
P.L. 96-88, §509(b), deemed any reference to the Department of Health, Education, and Welfare or any official of that Department shall refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively.

judgment, may be released without risk as to the safety and efficacy of its use. Such release shall prescribe the date of its expiration and other conditions under which it shall cease to be effective as to such batch and as to portions thereof. For purposes of this section and of section 502(l), the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(b) Regulations providing for such certifications shall contain such provisions as are necessary to carry out the purposes of this section, including provisions prescribing (1) standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates, and other conditions under which they shall cease to be effective as to certified batches and as to portions thereof; (4) administration and procedure; and (5) such fees, specified in such regulations, as are necessary to provide, equip, and maintain an adequate certification service. Such regulations shall prescribe only such tests and methods of assay as will provide for certification or rejection within the shortest time consistent with the purposes of this section.

(c) Whenever in the judgment of the Administrator, the requirements of this section and of section 502(l) with respect to any drug or class of drugs are not necessary to insure safety and efficacy of use, the Administrator shall promulgate regulations exempting such drug or class of drugs from such requirements. In deciding whether an antibiotic drug, or class of antibiotic drugs, is to be exempted from the requirement of certification the Secretary shall give consideration, among other relevant factors, to—

(1) whether such drug or class of drugs is manufactured by a person who has, or hereafter shall have, produced fifty consecutive batches of such drug or class of drugs in compliance with the regulations for the certification thereof within a period of not more than eighteen calendar months, upon the application by such person to the Secretary; or

(2) whether such drug or class of drugs is manufactured by any person who has otherwise demonstrated such consistency in the production of such drug or class of drugs, in compliance with the regulations for the certification thereof, as in the judgment of the Secretary is adequate to insure the safety and efficacy of use thereof.

When an antibiotic drug or a drug manufacturer has been exempted from the requirement of certification, the manufacturer may still obtain certification of a batch or batches of that drug if he applies for and meets the requirements for certification. Nothing in this Act shall be deemed to prevent a manufacturer or distributor of an antibiotic drug from making a truthful statement in labeling or advertising of the product as to whether it has been certified or exempted from the requirement of certification.

(d) The Administrator shall promulgate regulations exempting from any requirement of this section and of section 502(l), (1) drugs which are to be stored, processed, labeled, or repacked at establishments other than those where manufactured, on condition that such drugs comply with all such requirements upon removal from such establishments; (2) drugs which conform to applicable standards of identity, strength, quality, and purity prescribed by these regulations and are intended for use in manufacturing other drugs; and (3) drugs which are intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and efficacy of drugs. Such regulations may, within the discretion of the Secretary, among other conditions relating to the protection of the public health, provide for conditioning the exemption under clause (3) upon—

(1) the submission to the Secretary, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;

(2) the manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and

(3) the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Secretary finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application for certification or release pursuant to subsection (a).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Secretary reports on the investigational use of drugs.

(e) No drug which is subject to section 507 shall be deemed to be subject to any provision of section 505 except a new drug exempted from the requirements of this section and of section 502(l) pursuant to regulations promulgated by the Secretary: *Provided,* That, for purposes of section 505, the initial request for certification, as thereafter duly amended, pursuant to section 507, of a new drug so exempted shall be considered a part of the application filed pursuant to section 505(b) with respect to the person filing such request and to such drug as of the date of the exemption. Compliance of any drug subject to sectijon 502(l) or 507 with sections 501(b) and 502(g) shall be determined by the application of the standards of strength, quality, and purity, the tests and methods of assay, and the requirements of packaging and labeling, respectively, prescribed by regulations promulgated under section 507.

(f) Any interested person may file with the Administrator a petition proposing the issuance, amendment, or repeal of any regulation contemplated by this section. The petition shall set forth the proposal in general terms and shall state reasonable grounds therefor. The Administrator shall give public notice of the proposal and an opportunity for all interested persons to present their views thereon, orally or in writing, and as soon as practicable thereafter shall make public his action upon such proposal. At any time prior to the thirtieth day after such action is made public any interested person may file objections to such action, specifying with particularity the changes desired, stating reasonable grounds therefor, and requesting a public hearing upon such objections. The Administrator shall thereupon, after due notice, hold such public hearing. As soon as practicable after completion of the hearing, the Administrator shall by order make public his action on such objections. The Administrator shall base his order only on substantial evidence of record at the hearing and shall set forth as part of the order detailed findings of fact on which the order is based. The order shall be subject to the provisions of section 701(f) and (g).

(g)(1) Every person engaged in manufacturing, compounding, or processing any drug within the purview of this section with respect to which a certificate or release has been issued pursuant to this section shall establish and maintain such records, and make such reports to the Secretary, of data relating to clinical experience and other data or information, received or otherwise obtained by such person with respect to such drug, as the Secretary may by general regulation, or by order with respect to such certification or release, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to make, or to facilitate, a determination as to whether such certification or release should be rescinded or whether any regulation issued under this section should be amended or repealed: *Provided, however,* That regulations and orders issued under this subsection and under clause (3) of subsection (d) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Secretary.

(2) Every person required under this section to maintain records, and every person having charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(h) In the case of a drug for which, on the day immediately preceding the effective date of this subsection, a prior approval of an application under section 505 had not been withdrawn under section 505(e), the initial issuance of regulations providing for certification or exemption of such drug under this section 507 shall, with respect to the conditions of use prescribed, recommended, or suggested in the labeling covered by such application, not be conditioned upon an affirmative finding of the efficacy of such drug. Any subsequent amendment or repeal of such regulations so as no longer to provide for such certification or exemption on the ground of a lack of efficacy of such drug for use under such conditions of use may be effected only on or after that effective date of clause (3) of the first sentence of section 505(e) which would be applicable to such drug under such conditions of use if such drug were subject to section 505(e), and then only if (1) such amendment or repeal is made in accordance

with the procedure specified in subsection (f) of this section (except that such amendment or repeal may be initiated either by a proposal of the Secretary or by a petition of any interested person) and (2) the Secretary finds, on the basis of new information with respect to such drug evaluated together with the information before him when the application under section 505 became effective or was approved, that there is a lack of substantial evidence (as defined in section 505(d)) that the drug has the effect it purports or is represented to have under such conditions of use.

[*Internal References.*—Social Security Act §§1861(t) and 1862(c) cite the Federal Food, Drug, and Cosmetic Act.]

P.L. 75-722, Approved June 25, 1938 (52 Stat. 1094)
Railroad Unemployment Insurance Act

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DISQUALIFYING CONDITIONS

SEC. 4. [45 U.S.C. 354] (a-1) There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974, or insurance benefits under title II of the Social Security Act, or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this Act, or any other social-insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this Act for such registration period will have been paid, the amount by which such benefits under this Act will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this Act which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this Act for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginnng with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;

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RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. [45 U.S.C. 361] (a) The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 8 of this Act as equals 0.65[1] per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such

[1]P.L. 100-647, §7103(b)(2), struck out "0.5" and substituted "0.65".

additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated.

(b) In addition to the other moneys herein provided for expenses necessary or incidental to administering this Act, there is hereby appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public[2], Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than $2,000,000, as the Board requests for the purpose of financing the costs of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

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[*Internal Reference.*—Social Security Act §904(g) cites section 11(b) of the Railroad Unemployment Insurance Act.]

P.L. 76-379, Approved August 10, 1939 (53 Stat. 1360)
Social Security Act Amendments of 1939

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SEC. 907. [42 U.S.C. 403 note] In addition to any other deductions made under section 203 of the Social Security Act, as amended, deductions shall be made from any primary insurance benefit or benefits to which an individual is entitled or from any other insurance benefit payable with respect to such individual's wages, until such deductions total 1 per centum of any wages paid him for services performed in 1939, and subsequent to his attaining age sixty-five, and 1 per centum of any wages paid him for services which constitute employment by virtue of subsection (o) of section 209 of the Social Security Act, as amended, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code have not been deducted by his employer from his wages or paid by such employer.

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[*Internal Reference.*—20 CFR 404.501 cites §907 of P.L. 76-379.]

P.L. 78-410, Approved July 1, 1944 (58 Stat. 682)
Public Health Service Act

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[2]As in original. Possibly should be "Public Law".
[1]Table of contents is not part of Act.

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TITLE I—SHORT TITLE AND DEFINITIONS

SHORT TITLE

SECTION 1. [42 U.S.C. 201 note] This Act may be cited as the "Public Health Service Act".

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TITLE II—ADMINISTRATION

PUBLIC HEALTH SERVICE

SEC. 201. [42 U.S.C. 202] The Public Health Service in the Department of Health, Education, and Welfare shall be administered by the Surgeon General under the supervision and direction of the Secretary.

ORGANIZATION*

SEC. 202. [42 U.S.C. 203] The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and (4) the Bureau of State Services. The Surgeon General is authorized and directed to assign to the Office of the Surgeon General, to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Surgeon General may delegate to any officer or employee of the Service such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

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TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

PART A—RESEARCH AND INVESTIGATION

IN GENERAL

SEC. 301. [42 U.S.C. 241] (a) The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and

*The organizational units specified in this section were all abolished as statutory entities by Reorganization Plan No. 3 of 1966.

pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects and make, upon recommendation of the advisory council to the appropriate entity of the Department, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under title 10, United States Code, sections 2353 and 2354, except that determination, approval, and certification required thereby shall be by the Secretary of Health, Education, and Welfare; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b)(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health, Education, and Welfare and shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish an annual report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health, Education, and Welfare for the Secretary, or

(II) from an entity within the Department of Health, Education, and Welfare to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.

(d)[3] The Secretary may authorize persons engaged in biomedical, behavioral, clinical, or other research (including[4] research on mental health, including research on the use and effect of alcohol and other psychoactive drugs)[5] to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

* * * * * * *

GENERAL AUTHORITY RESPECTING RESEARCH, EVALUATIONS, AND DEMONSTRATIONS IN HEALTH STATISTICS, HEALTH SERVICES, AND HEALTH CARE TECHNOLOGY ASSESSMENT

SEC. 304. [42 U.S.C. 242b]

* * * * * * *

(d)(1) The Secretary, with the advice and assistance of the National Academy of Sciences (acting through the Institute of Medicine and other appropriate units), shall, in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 308(i)(2), an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary shall, to the extent feasible—

(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

(B) identify each such disease and adverse effect on humans and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

(C) identify (on a national, regional, or other geographical basis) the source or sources of such pollutants and conditions and estimate the portion of each

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[3] P.L. 100-607, §163(1)(A), transferred the matter after and below paragraph (2) of §303(a) to §301; §163(1)(B), redesignated such matter as subsection (d); and §163(1)(C), added subsection (d) (as so redesignated) at the end of §301.

[4] P.L. 100-607, §163(2)(A), inserted "biomedical, behavioral, clinical, or other research (including".

[5] P.L. 100-607, §163(2)(B), struck out a comma and substituted a closing parenthesis.

pollutant and the extent of each condition which can be traced to a specific type of source;

(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon the incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

* * * * * *

(4) For purposes of paragraph (1), the term "health costs of pollution and other environmental conditions" means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such diseases and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs.

NATIONAL CENTER FOR HEALTH SERVICES RESEARCH

Sec. 305. [42 U.S.C. 242c] (a) There is established in the Department of Health and Human Services the National Center for Health Services Research and Health Care Technology Assessment (hereinafter in this section referred to as the "Center") which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

(b) In carrying out section 304(a), the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (which may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act and the Social Security Amendments of 1967[•]) respecting—

(1) the accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems;

(2) the supply and distribution, education and training, quality, utilization, organization, and costs of health manpower;

(3) the design, utilization, organization, and cost of facilities and equipment,

(4) the role of market forces in the health care system and the appropriate role they may play in restraining cost increases and improving the availability and quality of care; and

(5) the safety, efficacy, effectiveness, cost effectiveness, economic, and social impacts of health care technologies.

No grant or contract shall be made under this subsection for the purpose of funding clinical research that is directly related to determining the cause of any disease or disorder or clinical research that is directly and principally designed to evaluate the efficacy of any therapeutic, diagnostic, or preventive health measure.

(c) In carrying out section 304(a), the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (that may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act (42 U.S.C. 301 et seq.) and the Social Security Amendments of 1967 (Public Law 90-248; 81 Stat. 821)) respecting the delivery of health care services in rural areas (including frontier areas), which may include projects with respect to—

(1) the future of the rural hospital;

[•]P.L. 90-248.

(2) long-term health care for the rural elderly;
(3) hospital care for the rural poor and uninsured; and
(4) alternative health care delivery systems and managed health care in rural areas.[7]

(d)[8](1) The Secretary shall afford appropriate consideration to requests of—
(A) State, regional, and local health planning and health agencies,
(B) public and private entities and individuals engaged in the delivery of health care, and
(C) other persons concerned with health services,
to have the Center or other units of the Department of Health and Human Services undertake research, evaluations, and demonstrations respecting specific aspects of the matters referred to in subsection (b).

(2) In carrying out this section, the Secretary shall assist State and local health agencies through a user liaison program and a technical assistance program.

(e)[8](1) The Secretary shall, by grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, evaluations, training, policy analysis,,[10] and demonstrations respecting the matters referred to in subsection (b). To the extent practicable, the Secretary shall approve, in accordance with the requirements of this subsection and section 308, a number of applications for grants and contracts under this subsection which will result in at least three of such centers (including two national special emphasis centers, one of which (to be designated as the Health Care Management Center) shall focus on the improvement of management and organization in the health field, the training and retraining of administrators of health care enterprises, and the development of leaders, planners, and policy analysts in the health field; and one of which (to be designated as the Health Services Policy Analysis Center) shall focus on the development and evaluation of national policies with respect to health services, including the development of health maintenance organizations and other forms of group practice, with a view toward improving the efficiencies of the health services delivery system) being operational in each fiscal year.

(2)(A) No grant or contract may be made under this subsection for planning and establishing a center unless the Secretary determines that when it is operational it will meet the requirements listed in subparagraph (B) and no payment shall be made under a grant or contract for operation of a center unless the center meets such requirements.

(B) The requirements referred to in subparagraph (A) are as follows:
(i) There shall be a full-time director of the center who possesses a demonstrated capacity for sustained productivity and leadership in health services research, demonstrations, and evaluations, and there shall be such additional full-time professional staff as may be appropriate.
(ii) The staff of the center shall represent all relevant disciplines.
(iii) The center shall (I) be located within an established academic or research institution with departments and resources appropriate to the programs of the center, and (II) have working relationships with health service delivery systems where experiments in health services may be initiated and evaluated.
(iv) The center shall select problems in health services for research, evaluations, policy analysis, and demonstrations on the basis of (I) their regional or national importance, (II) the unique potential for definitive research on the problem, and (III) opportunities for local application of the research findings.
(v) Such additional requirements as the Secretary may by regulation prescribe.

(f)[11](1) The Center shall advise the Secretary respecting health care technology issues and make recommendations with respect to whether specific health care technologies should be reimbursable under federally financed health programs.

(2) In making recommendations respecting health care technologies, the Center shall consider the safety, efficacy, and effectiveness, and, as appropriate, the cost-effectiveness and appropriate uses of the technology.

(3) In carrying out its responsibilities under this section respecting health care technologies, the Center shall cooperate and consult with the National Institutes of Health, the Food and Drug Administration, and any other interested Federal departments or agencies.

(g)[12](1) The Secretary, acting through the Center, shall undertake and support (by

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[7]P.L. 100-177, §101(2), added this subsection (c).
[8]P.L. 100-177, §101(1), redesignated subsections (c) through (i) as subsections (d) through (j).
[9]See footnote 8.
[10]As in original. One comma should be stricken.
[11]See footnote 8.
[12]See footnote 8.

grant or contract) research regarding technology diffusion, methods to assess health care technology, and specific health care technologies.

(2) Any grant or contract under paragraph (1), the direct cost of which will exceed $50,000, may be made or entered into only after consultation with the National Advisory Council on Health Care Technology Assessment.

(h)[12](1) There is established the National Advisory Council on Health Care Technology Assessment (hereinafter in this section referred to as the "Council"). The Council shall advise the Secretary and the Director of the Center with respect to the performance of the health care technology assessment functions prescribed by this section. The Council shall make recommendations to the Director with respect to the development of[14] criteria and methods to be used by the Center in making health care technology coverage recommendations.

(2) The Council shall consist of—

(A) the Director of the National Institutes of Health, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the head of the Centers for Disease Control, the head of the Health Care Financing Administration, and such other Federal officials as the Secretary may specify, who shall be ex officio members, and

(B) twelve voting members appointed by the Secretary.

(3)(A) The Secretary shall appoint to the Council—

(i) six individuals distinguished in the fields of medicine, engineering, and science (including social science);

(ii) four individuals distinguished in the fields of law, ethics, economics, and management; and

(iii) two individuals representing the interests of consumers of health care services.

(B) The Secretary shall ensure that members of the Council, as a group, are representative of professions and entities concerned with, or affected by, health care technology.[15]

(4)(A) Each appointed member of the Council shall be appointed for a term of three years, except that—

(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(ii) of the members first appointed after the date of the enactment of this subsection, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may be appointed for additional terms and may serve after the expiration of their terms until their successors have taken office.

(B) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code[16], for persons in the Government service employed intermittently.

(5) The Council shall annually elect one of its appointed members to serve as Chairman until the next election.

(6) The Council shall meet at the call of the Chairman, but not less often than three times a year.

(7) The Director of the Center shall (A) designate a member of the staff of the Center to act as Executive Secretary of the Council, and (B) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.

(i)[17] In each fiscal year, seven and one-half percent of the amount made available under section 2613[18] for such fiscal year for evaluations shall be made available to the Assistant Secretary for Health to conduct or support (by both grants and contracts) through the Center, evaluations of health services and health care technology which evaluations are not being conducted or supported under this section or section 304. In

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[12]See footnote 8.

[14]P.L. 100-177, §102(1), struck out "assist the Director in developing" and substituted "make recommendations to the Director with respect to the development of".

[15]P.L. 100-177, §102(2), amended paragraph (3) in its entirety.

[16]See Vol. II, p. 60.

[17]See footnote 8.

[18]P.L. 100-607, §204(1), struck out "2313" and substituted "2511".
P.L. 100-690, §2620(b)(3), struck out "2513" and substituted "2613". Executed as if "2513" read "2511".

administering this subsection, the Secretary shall assure that the amount to be made available in any fiscal year is seven and one-half percent of the maximum amount authorized to be made available under section 2613[19] in such fiscal year.

(j) [20] The authority of the Secretary under section 304(b) shall be available to him with respect to the undertaking and support of projects under this section.

NATIONAL CENTER FOR HEALTH STATISTICS

SEC. 306. [42 U.S.C. 242k]

* * * * * * *

(e) For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection and other activities carried out under the System; and

(4) review the statistical activities of the Department of Health and Human Services to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system produce uniform and timely data and assure appropriate access to such data.

* * * * * * *

GRANTS FOR A COUNCIL ON HEALTH CARE TECHNOLOGY

Sec. 309. [42 U.S.C. 242n] (a)(1) In accordance with this section, the Secretary shall make grants for the planning, development, establishment, and operation of a council on health care technology.

(2)(A)(i) The Secretary shall make an initial grant under paragraph (1) for the planning, development, and establishment of the council. The amount of an initial grant may not exceed $500,000 and may be made for not more than two-thirds of the cost of the planning, development, and establishment of the council.

(ii) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application for an initial grant under paragraph (1). If the Academy submits an acceptable application, the Secretary shall make the initial grant to the Academy. If the Academy does not submit an acceptable application for an initial grant under paragraph (1), the Secretary shall request one or more appropriate nonprofit private entities to submit an application for an initial grant under paragraph (1) and shall make a grant to the entity which submits the best acceptable application.

(B) The Secretary may not make a grant for the operation of the council unless the application submitted to the Secretary for the grant contains written assurances from the applicant that the applicant will expend from non-Federal sources for the operation of the council an amount equal to at least twice the amount of the grant applied for, except that for fiscal years 1988 and 1989, the Secretary may only require expenditures from non-Federal sources in an amount not less than the amount of the grant applied for[21].

(b) The purposes of the council shall include—

(1) promoting the development and application of appropriate health care technology assessments; and

(2) the review of existing health care technologies in order to identify obsolete or inappropriately used health care technologies.

(c)(1) In order to qualify for a grant under this section for the operation of the council, the applicant must demonstrate that it has the capability to, and that under the grant it will—

(A) serve as a clearinghouse for information on health care technologies and health care technology assessment;

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[19] See footnote 18.
[20] See footnote 8.
[21] P.L. 100-177, §109, inserted ", except that for fiscal years 1988 and 1989, the Secretary may only require expenditures from non-Federal sources in an amount not less than the amount of the grant applied for".

(B) collect and analyze data concerning specific health care technologies;

(C) identify needs in the assessment of specific health care technologies and research on assessment methodologies;

(D) develop and evaluate criteria and methodologies for health care technology assessment;

(E) promote education, training, and technical assistance in the use of health care technology assessment methodologies and results; and

(F) stimulate, coordinate, and commission assessments of health care technologies.

(2) No funds from any grant made by the Secretary under this section for the planning, development, and establishment of the council may be used to conduct any assessment of a health care technology.

(d) In order to qualify for an initial grant under this section to plan, develop, and establish the council under this section, the applicant must assure that the council will be composed of at least 10 members—

(1) each of whom has education, training, experience, or expertise relating to the quality and cost effectiveness of health care technologies, and

(2) who, as a group, provide representation of organizations of health professionals, hospitals, and other health care providers, health care insurers, employers, consumers, and manufacturers of products for health care.

(e) As a condition for receiving a grant under this section, the applicant must agree to submit to the Secretary an annual report on the council's activities under the grant. The Secretary shall provide for timely transmittal of a copy of each such report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(f) No grant may be made under this section unless an application is submitted to the Secretary in such form and containing such information as the Secretary shall prescribe.

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PART B—FEDERAL-STATE COOPERATION

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GRANTS FOR COMPREHENSIVE HEALTH PLANNING AND PUBLIC HEALTH SERVICES

Grants to States for Comprehensive State Health Planning

SEC. 314. [42 U.S.C. 246] (a)(1) AUTHORIZATION.—In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

(2) STATE PLANS FOR COMPREHENSIVE STATE HEALTH PLANNING.—In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Veterans' Administration, the individual whom the Administrator of Veterans' Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Administration which are located in such State) and nongovernmental organizations and groups concerned with health (including representation of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F)[22] provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) STATE ALLOTMENTS.—From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

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[22]Sec. 208(a)(3) of P.L. 91-648 (42 U.S.C. 4728) transferred to the U.S. Civil Service Commission all functions, powers, and duties of the Secretary under any law applicable to a grant program which requires the establishment and maintenance of personnel standards on a merit basis with respect to the program.

(4) PAYMENTS TO STATES.—From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The "Federal share" for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

Project Grants for Areawide Health Planning

(b)(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a), project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

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SEC. 317A. [42 U.S.C. 247b-1] LEAD POISONING PREVENTION.[23]

[23]P.L. 100-572, §3, added section 317A.

(a) GRANTS TO STATES.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States and agencies of units of local governments for the initiation and expansion of community programs designed to (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning. In making grants under this paragraph, the Secretary shall give priority to applications for programs which will serve areas with a high incidence of elevated blood lead levels in infants and children.

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(d) COORDINATION.—No grant may be made under subsection (a) unless the Secretary determines that there will be coordination between the recipient of the grant and activities within the State in which the grantee is located under titles V and XIX of the Social Security Act relating to lead poisoning prevention.

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PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

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MIGRANT HEALTH

SEC. 329. [42 U.S.C. 254b] (a) For purposes of this section:

(1) The term "migrant health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(A) primary health services,

(B) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(C) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(D) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(E) as may be appropriate for particular centers (as determined by the centers), infectious and parasitic disease screening and control,

(F) as may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure,[24]

(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals,

(H) patient case management services (including outreach, counseling, referral, and follow-up services),[25]

for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves (referred to in this section as a "catchment area") and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves.

(2) The term "migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last twenty-four months, and who establishes for the purposes of such employment a temporary abode.

(3) The term "seasonal agricultural workers[26]" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term "agriculture" means farming in all its branches, including—

(A) cultivation and tillage of the soil,

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[24] P.L. 100-386, §2(a)(1), struck out "and".
[25] P.L. 100-386, §2(a)(2), inserted subparagraph (H).
[26] As in original. Possibly should be "worker".

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

(5) The term "high impact area" means a health service area or other area which has not less than four thousand migratory agricultural workers and seasonal agricultural workers residing within its boundaries for more than two months in any calendar year. In computing the number of workers residing in an area, there shall be included as workers the members of the families of such workers.

(6) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(7) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;[27]

(L) health education services (including nutrition education); and[28]

(M) other services appropriate to meet the health needs of the population served by the migrant health center involved.[29]

(b)(1) The Secretary shall assign to high impact areas and any other areas (where appropriate) priorities for the provision of assistance under this section to projects and programs in such areas. The highest priorities for such assistance shall be assigned to areas where the Secretary determines the greatest need exists.

(2) No application for a grant under subsection (c) or (d) for a project in an area which has no migratory agricultural workers may be approved unless grants have been provided for all approved applications under such subsections for projects in areas with migratory agricultural workers.

(c)(1)(A) The Secretary may, in accordance with the priorities assigned under subsection (b)(1), make grants to public and nonprofit private entities for projects to plan and develop migrant health centers which will serve migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in high impact areas. A project for which a grant may be made under this subparagraph may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new [30] buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of providing training related to the management of migrant health center programs, and shall include—

(i) an assessment of the need that the workers (and the members of the families of such workers) proposed to be served by the migrant health center for which the project is undertaken have for primary health services, supplemental health services, and environmental health services;

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[27] P.L. 100-386, §2(b)(1), struck out "and".

[28] P.L. 100-386, §2(b)(2), struck out the period and substituted "; and".

[29] P.L. 100-386, §2(b)(3), added subparagraph (M).

[30] P.L. 100-386, §2(e)(1)(A), struck out "and modernization of existing" and substituted ", expansion, and modernization of existing buildings and construction of new".

(ii) the design of a migrant health center program for such workers and the members of their families, based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project.

(B) The Secretary may make grants to or enter into contracts with public and nonprofit private entities for projects to plan and develop programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings,[31] and providing training related to the management of programs assisted under this subparagraph.

(2) Not more than two grants may be made under paragraph (1)(A) for the same project, and if a grant or contract is made or entered into under paragraph (1)(B) for a project, no other grant or contract under that paragraph may be made or entered into for the project.

(3) The amount of any grant made under paragraph (1) for any project shall be determined by the Secretary.

(d)(1)(A)(i)[32] The Secretary may, in accordance with priorities assigned under subsection (b)(1), make grants for the costs of operation of public and nonprofit private migrant health centers in high impact areas.

(ii) If the Secretary makes a determination that an area is a high impact area, the Secretary may alter the determination only after providing to the grantee under subclause (i) for the area, and to other interested entities in the area, reasonable notice with respect to such determination and a reasonable opportunity to offer information with respect to such determination.[33]

(B) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects for the operation of programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and the members of their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings,[34] and providing training related to the management of programs assisted under this subparagraph.

(C) The Secretary may make grants to migrant health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (f)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

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[31] P.L. 100-386, §2(e)(1)(B), struck out "and modernization of existing buildings" and substituted ", expansion, and modernization of existing buildings, construction of new buildings,".

[32] P.L. 100-386, §2(c)(1), inserted "(i)".

[33] P.L. 100-386, §2(c)(2), added clause (ii).

[34] P.L. 100-386, §2(e)(1)(C), struck out "and modernization of existing buildings" and substituted ", expansion, and modernization of existing buildings, construction of new buildings,".

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings,[35] and providing training related to the management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new[36] buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of repaying loans made by the Farmers Home Administration for buildings; and the costs for which a grant or contract may be made under paragraph (1) may include the costs of providing training related to the provision of primary health services, supplemental health services, and environmental health services, and to the management of migrant health center programs.

(3) Not more than two grants may be made under paragraph (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding, and[37]

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subparagraph (D) or (E) of subsection (a)(1) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use[38] (I) to expand and improve its services, (II) to increase the number of persons (eligible under subsection (a) to receive services from such a center) it is able to serve, (III) to construct, expand,[39] and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e) The Secretary may enter into contracts with public and private entities to—

(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

(2) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental

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[35] P.L. 100-386, §2(e)(1)(D), struck out "and modernization of existing buildings" and substituted ", expansion, and modernization of existing buildings, construction of new buildings,".

[36] P.L. 100-386, §2(e)(1)(E), struck out "and modernizing existing" and substituted ", expanding, and modernizing existing buildings and constructing new".

[37] P.L. 100-386, §2(f)(1), amended clause (i) in its entirety.

[38] P.L. 100-386, §2(f)(2), struck out "may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center" and substituted "shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use".

[39] P.L. 100-386, §2(e)(1)(F), inserted ", expand,".

health hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.

(f)(1) No grant may be made under subsection (c) or (d) and no contract may be entered into under subsection (c)(1)(B), (d)(1)(B), or (e) unless an application therefore[40] is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant or contract which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (sections 276a to 276a-5 of title 40, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) of subsection (d)(1) for a migrant health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

In considering an application for a grant under subparagraph (A) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) The Secretary may not approve an application for a grant under subsection (d)(1)(A) unless the Secretary determines that the entity for which the application is submitted is a migrant health center (within the meaning of subsection (a)(1)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations of the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of the Social Security Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and[41] designed to cover its reasonable costs of operation and has prepared[42] a corresponding

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[40] As in original. Possibly should be "therefor".
[41] P.L. 100-386, §2(d)(1), inserted "consistent with locally prevailing rates or charges and".
[42] P.L. 100-386, §2(d)(2), inserted "has prepared".

schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation; and

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

For purposes of subparagraph (G) and subsection (h)(4), the term "public center" means a migrant health center funded (or to be funded) through a grant under this section to a public agency.

(4) In considering applications for grants and contracts under subsection (c) or (d)(1)(B), the Secretary shall give priority to applications submitted by community-based organizations which are representative of the populations to be served through the projects, programs, or centers to be assisted by such grants or contracts.

(5) The Secretary, in making a grant under this section to a migrant health center for the provision of environmental health services described in subsection (a)(1)(D), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) Contracts may be entered into under this section without regard to section 529[43] of title 31 and section 5 of title 41.

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[43]P.L. 97-258, §4(b), deemed this reference to be to 31 U.S.C. 3324(a) and (b).

(7) The Secretary may make a grant under subsection (c) or (d) for the construction of new buildings for a migrant health center or a migrant health program only if the Secretary determines that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.[44]

(g)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any migrant health center or to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a migrant health center, and in meeting the requirements of subsection (f)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(h)(1)(A) For the purposes of subsections (c) through (e), there are authorized to be appropriated $48,500,000 for fiscal year 1989 and such sums as may be necessary for fiscal years 1990 and 1991.

(B) Of the amounts appropriated pursuant to subparagraph (A) for a fiscal year, the Secretary may obligate for grants and contracts under subsection (c)(1) not more than 2 percent, for grants under subsection (d)(1)(C) not more than 5 percent, and for contracts under subsection (e) not more than 10 percent.[45]

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $2,000,000 for fiscal year 1990, and $2,500,000 for fiscal year 1991.

(B) The Secretary may make grants to migrant health centers to assist such centers in—

(i) providing services for the reduction of the incidence of infant mortality; and

(ii) developing and coordinating referral arrangements between migrant health centers and other entities for the health management of infants and pregnant women.

(C) In making grants under subparagraph (B), the Secretary shall give priority to migrant health centers providing services in any catchment area in which there is a substantial incidence of infant mortality or in which there is a significant increase in the incidence of infant mortality.[46]

(3)[47] The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (f)(3)) the governing boards of which (as described in subsection (f)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(i) The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.[48]

COMMUNITY HEALTH CENTERS

SEC. 330. [42 U.S.C. 254c] (a) For purposes of this section, the term "community health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(1) primarily health services,

(2) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(3) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(4) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health, [49]

(5) information on the availability and proper use of health services,

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[44] P.L. 100-386, §2(e)(2), added paragraph (7).
[45] P.L. 100-386, §2(h)(1), amended paragraph (1) in its entirety.
[46] P.L. 100-386, §2(h)(2), added this paragraph (2).
[47] P.L. 100-386, §2(h)(2), redesignated paragraph (2) as paragraph (3).
[48] P.L. 100-386, §2(g), added subsection (i).
[49] P.L. 100-386, §3(a)(1), struck out "and".

(6) patient case management services (including outreach, counseling, referral, and follow-up services),[50]

for all residents of the area it serves (referred to in this section as a "catchment area").

(b) For purposes of this section:

(1) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(2) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); [51]

(M) services which promote and facilitate optimal use of primary health services and the services referred to in the preceding subparagraphs of this paragraph, including, if a substantial number of the individuals in the population served by a community health center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals; and[52]

(N) other services appropriate to meet the health needs of the medically underserved population served by the community health center involved.[53]

(3) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(4) In carrying out paragraph (3), the Secretary shall by regulation prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(A) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(B) include infant mortality in an area or population group, other factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

The Secretary may modify the criteria established in regulations issued under this paragraph only after affording public notice and an opportunity for comment on any such proposed modifications.[54]

(5) The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(A) the chief executive officer of such State;

(B) local officials in such State; and

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[50] P.L. 100-386, §3(a)(2), inserted paragraph (6).
[51] P.L. 100-386, §3(b)(1), struck out "and".
[52] P.L. 100-386, §3(b)(2), struck out the period and substituted "; and".
[53] P.L. 100-386, §3(b)(3), added subparagraph (N).
[54] P.L. 100-386, §3(c), added this sentence.

(C) the State organization, if any, which represents a majority of community health centers in such State.

(6) The Secretary may designate a medically underserved population that does not meet the criteria established under paragraph (4) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c)(1) The Secretary may make grants to public and nonprofit private entities for projects to plan and develop community health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new[55] buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(A) an assessment of the need that the population proposed to be served by the community health center for which the project is undertaken has for primary health services, supplemental health services, and environmental health services;

(B) the design of a community health center program for such population based on such assessment;

(C) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(D) initiation and encouragement of continuing community involvement in the development and operation of the project.

(2) Not more than two grants may be made under this subsection for the same project.

(3) The amount of any grant made under this subsection for any project shall be determined by the Secretary.

(d)(1)(A) The Secretary may make grants for the costs of operation of public and nonprofit private community health centers which serve medically underserved populations.

(B) The Secretary may make grants for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which he is unable to make each of the determinations required by subsection (e)(3).

(C) The Secretary may make grants to community health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (e)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings,[56] and providing training related to management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) or (1)(B) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new[57] buildings (including the costs of amortizing the principal of, and paying interest on, loans), the costs of repaying loans made by the Farmers Home Administration for buildings, and the costs of providing training related to the provision of primary health services, supplemental health services and environmental health services, and to the management of community health center programs.

(3) Not more than two grants may be made under paragraph (1)(B) or (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under paragraph (1) (other than subparagraph (C)) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

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[55] P.L. 100-386, §3(e)(1)(A), struck out "and modernization of existing" and substituted ", expansion, and modernization of existing buildings and construction of new".

[56] P.L. 100-386, §3(e)(1)(B), struck out "and modernization of existing buildings" and substituted ", expansion, and modernization of existing buildings, construction of new buildings,".

[57] P.L. 100-386, §3(e)(1)(C), struck out "and modernizing existing" and substituted ", expanding, and modernizing existing buildings and constructing new".

(i) State, local, and other operational funding, and[58]

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subsection (a)(4) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (L), or (M) of subsection (b)(2), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use[59] (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such a center) it is able to serve, (III) to construct , expand,[60] and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e)(1) No grant may be made under subsection (c) or (d) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(2) An application for a grant under subparagraph (A) or (B) of subsection (d)(1) for a community health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) and in subparagraphs (B), (F), (L), and (M) of subsection (b)(2),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

Such an application shall also include a demonstration by the applicant that the area or a population group to be served by the applicant has a shortage of personal health services and that the center will be located so that it will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) or on any other criteria which the Secretary may

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[58] P.L. 100-386, §3(f)(1), amended clause (i) in its entirety.

[59] P.L. 100-386, §3(f)(2), struck out "may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center" and substituted "shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use".

[60] P.L. 100-386, §3(f)(1)(D), inserted ", expand,".

prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health services described in subsection (a) or (b) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) Except as provided in subsection (d)(1)(B), the Secretary may not approve an application for a grant under paragraph (1)(A) or (1)(B) of subsection (d) unless the Secretary determines that the entity for which the application is submitted is a community health center (within the meaning of subsection (a)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations prescribed by the Secretary, or (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and[61] designed to cover its reasonable costs of operation and has prepared[62] a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

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[61] P.L. 100-386, §3(d)(1), inserted "consistent with locally prevailing rates or charges and".
[62] P.L. 100-386, §3(d)(2), inserted "has prepared".

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation;

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and

(K) the center, in accordance with regulations prescribed by the Secretary, has developed an on-going referral relationship with one or more hospitals.

For purposes of subparagraph (G) and subsection (g)(4), the term "public center" means a community health center funded (or to be funded) through a grant under this section to a public agency.

(4) The Secretary shall approve applications for grants under paragraph (1)(A) or (1)(B) of subsection (d) for community health centers which—

(A) have not received a previous grant under such paragraph, or

(B) have applied for such a grant to expand their services,

in such a manner that the ratio of the medical underserved populations in rural areas which may be expected to use the services provided by such centers to the medical underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) The Secretary may make a grant under subsection (c) or (d) for the construction of new buildings for a community health center only if the Secretary determines that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.[63]

(f)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other non-financial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requirements of subsection (e)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(g)(1)(A) For the purpose of payments under grants under this section, there are authorized to be appropriated $440,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal years 1990 and 1991.[64]

(B)[65] The Secretary may not in any fiscal year—

(i)[66] expend for grants to serve medically underserved populations designated under subsection (b)(6) an amount which exceeds 5 percent of the funds appropriated under paragraph (1)[67] for that fiscal year; and

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[63] P.L. 100-386, §3(e)(2), added paragraph (6).
[64] P.L. 100-386, §3(h)(1), amended paragraph (1) in its entirety and redesignated it as subparagraph (A).
[65] P.L. 100-386, §3(h)(2)(B), redesignated paragraph (2) as subparagraph (B).
[66] P.L. 100-386, §3(h)(2)(A), redesignated subparagraph (A) as clause (i).
[67] P.L. 100-386, §3(h)(2)(C), struck out "this section" and substituted "paragraph (1)".

(ii)[68] expend for grants under subsection (d)(1)(C) an amount which exceeds 5 percent of the funds appropriated under paragraph (1)[69] for that fiscal year.

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $35,000,000 for fiscal year 1991.

(B) The Secretary may make grants to community health centers to assist such centers in—

(i) providing services for the reduction of the incidence of infant mortality; and

(ii) developing and coordinating referral arrangements between community health centers and other entities for the health management of infants and pregnant women.

(C) In making grants under subparagraph (B), the Secretary shall give priority to community health centers providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.[70]

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (e)(3)) the governing boards of which (as described in subsection (e)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(h) In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new community health centers;

(3) review and comment upon annual program plans and budgets of community health centers, including comments upon allocations of health care resources in the State;

(4) assist community health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of community health centers; and

(5) share information and data relevant to the operation of new and existing community health centers.

(i)(1) Each entity which receives a grant under subsection (d) shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Each entity which receives a grant under subsection (d) shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Each entity which is required to establish and maintain records or to provide for an audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefor. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection to a community health center.

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[68] P.L. 100-386, §3(h)(2)(A), redesignated subparagraph (B) as clause (ii).
[69] P.L. 100-386, §3(h)(2)(D), struck out "this section" and substituted "paragraph (1)".
[70] P.L. 100-386, §3(h)(3), added this paragraph (2).

(j) The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.[71]

(k)[72] In making grants under this section, the Secretary shall give special consideration to the unique needs of frontier areas.[73]

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DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

SEC. 332. [42 U.S.C. 254e] (a)(1) For purposes of this subpart the term "health manpower shortage area" means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. The Secretary shall not remove an area from the areas determined to be health manpower shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health manpower shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.[74]

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BREACH OF SCHOLARSHIP CONTRACT OR LOAN REPAYMENT CONTRACT[75]

SEC. 338E.[76] [42 U.S.C. 254o]

(a)(1)[77] An individual who has entered into a written contract with the Secretary under section 338A and who—

(A)[78] fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B)[79] is dismissed from such educational institution for disciplinary reasons,

(C)[80] voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or

(D)[81] fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 338B and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii),

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[71] P.L. 100-386, §3(g), added subsection (j).
[72] P.L. 100-607, §163(3), redesignated subsection (j) as subsection (k).
[73] P.L. 100-386, §4, added this subsection.
[74] P.L. 100-177, §302(1), added this sentence.
[75] P.L. 100-177, §202(e)(6), inserted "OR LOAN REPAYMENT CONTRACT".
[76] P.L. 100-177, §201(2), redesignated §338D as §338E.
[77] P.L. 100-177, §202(e)(1)(A), inserted "(1)".
[78] P.L. 100-177, §202(e)(1)(B), redesignated paragraphs (1) through (4) as subparagraphs (A) through (D).
[79] See footnote 78.
[80] See footnote 78.
[81] See footnote 78.

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.[82]

(b)(1)(A)[83] Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) or section 338F(d)[84]) either to begin such individual's service obligation under section 338A[85] in accordance with section 338C[86] or 338D[87] or to complete such service obligation under section 338A[88], the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\emptyset \left(\frac{t-s}{t} \right)$$

in which "A" is the amount the United States is entitled to recover, "Ø" is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "(s)" is the number of months of such period served by him in accordance with section 338C[89] or a written agreement under section 338D[90]. [91]

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.[92]

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.[93]

(2) If an individual is released under section 753 from a service obligation under section 225 (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 753, subsection (f) of such section 225 shall apply to such individual in lieu of paragraph (1) of this subsection.

(c)(1) If (for any reason not specified in subsection (a) or section 338F(d)) an individual breaches the written contract of the individual under section 338B by failing either to begin such individual's service obligation in accordance with section 338C or 338D or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) in the case of a contract for a 2-year period of obligated service—

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[82]P.L. 100-177, §202(e)(1)(C), added paragraph (2).
[83]P.L. 100-177, §202(e)(2)(A) inserted "(A)".
[84]P.L. 100-177, §202(e)(2)(B), struck out "338E(d)" and substituted "338F(d)".
[85]P.L. 100-177, §202(e)(2)(E), inserted "under section 338A".
[86]P.L. 100-177, §202(e)(2)(D), struck out "338B" and substituted "338C".
[87]P.L. 100-177, §202(e)(2)(C), struck out "338C" and substituted "338D".
[88]See footnote 85.
[89]See footnote 86.
[90]See footnote 87.
[91]P.L. 100-177, §202(e)(2)(F), struck out "Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary for good cause shown), be paid to the United States.".
[92]P.L. 100-203, §4052(b) [as amended by P.L. 100-360, §411(f)(10)(B)], added this sentence.
[93]P.L. 100-177, §202(e)(2)(G), added subparagraph (B).

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty;

(B) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs before the end of the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty; and

(C) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs after the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service not served; and

(ii) if the individual breaching the contract failed to give the Secretary notice, that the individual intends to take action which constitutes a breach of the contract, at least 1 year (or such shorter period of time as the Secretary determines is adequate for finding a replacement) prior to the breach, $10,000.

(2) For purposes of paragraph (1), the term "unserved obligation penalty" means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B).[94]

(d)[95](1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder)[96] for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder)[97] whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder)[98] for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable[99].

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HOME HEALTH SERVICES

SEC. 339. [42 U.S.C. 255] (a)(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

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[94] P.L. 100-177, §202(e)(4), added this subsection (c).
[95] P.L. 100-177, §202(e)(3), redesignated the former subsection (c) as subsection (d).
[96] P.L. 100-177, §202(e)(5), inserted "or the Loan Repayment Program (or a contract thereunder)".
[97] See footnote 96.
[98] See footnote 96.
[99] P.L. 100-177, §308(a), inserted ", and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable".

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b)(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(c) The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) (as such subsections are in effect on the day after the date of enactment of the Orphan Drug Act[100]); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) For purposes of this section, the term "home health services" has the meaning prescribed for the term by section 1861(m) of the Social Security Act.

GRANT PROGRAM FOR CERTAIN HEALTH SERVICES FOR THE HOMELESS[101]

SEC. 340. [42 U.S.C. 256] (a) ESTABLISHMENT.—(1) The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of health services to homeless individuals.

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[100]January 4, 1983 (P.L. 97-414; 96 Stat. 2049).
[101]P.L. 100-77, §601, added this §340.

(2) In carrying out the program established in paragraph (1), the Administrator shall consult with the Director of the National Institute on Alcohol Abuse and Alcoholism and with the Director of the National Institute of Mental Health.

(b) MINIMUM QUALIFICATIONS OF GRANTEES.—The Secretary may not make a grant under subsection (a) to an applicant unless—

(1) the applicant is a public or nonprofit private entity;

(2) the applicant has the capacity to effectively administer a grant under subsection (a); and

(3) with respect to health services that are covered in the appropriate State plan approved under title XIX of the Social Security Act—

(A) if the applicant will provide under the grant any such health services directly—

(i) the applicant has entered into a participation agreement under the appropriate State plan; and

(ii) the applicant is qualified to receive payments under the appropriate State plan; and

(B) if the applicant will provide under the grant any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under the appropriate State plan; and

(ii) the organization is qualified to receive payments under the appropriate State plan.

(c) PREFERENCES IN MAKING GRANTS.—The Secretary shall, in making grants under subsection (a), give preference to qualified applicants that—

(1)(A) are experienced in the direct delivery of primary health services to homeless individuals or medically underserved populations; or

(B) are experienced in the treatment of substance abuse in homeless individuals or medically underserved populations; and

(2) agree to provide for health services to homeless individuals through both public entities and private organizations.

(d) REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS.—(1) The Secretary may not make a grant under subsection (a) to an applicant unless the applicant has submitted to the Secretary an application for the grant containing agreements in accordance with—

(A) subsection (e)(1)(A)(ii), relating to the provision of matching funds;

(B) subsection (f), relating to the provision of certain health services;

(C) subsection (i)[103], relating to restrictions on the use of funds;

(D) subsection (j) [103], relating to a limitation on charges for services;

(E) subsection (k)[104], relating to the administration of grants; and

(F) subsection (l)[105], relating to a limitation on administrative expenses.

(2) An application required in paragraph (1) shall, with respect to agreements required to be contained in the application, provide assurances of compliance satisfactory to the Secretary and shall otherwise be in such form, be made in such manner, and contain such information in addition to information required in paragraph (1) as the Secretary determines to be necessary to carry out this section.

(e) REQUIREMENT OF PROVISION OF MATCHING FUNDS.—(1)(A) The Secretary may not make a grant under subsection (a) to an applicant—

(i) in an amount exceeding 75 percent of the costs of providing health services for the first fiscal year of payments under the grant and 66 2/3 percent of the costs of providing such services for any subsequent fiscal year of payments[106] under the grant; and

(ii) unless the applicant agrees that the applicant will make available, directly or through donations to the applicant, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under subparagraph (B)) for each $3 of Federal funds provided for the first fiscal year of

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[103] P.L. 100-607, §802(b)(1)(A), struck out "(h)" and substituted "(i)".
P.L. 100-628, §602(b)(1)(A), made the same amendment as P.L. 100-607, §802(b)(1)(A).
[103] P.L. 100-607, §802(b)(1)(B), struck out "(i)" and substituted "(j)".
P.L. 100-628, §602(b)(1)(B), made the same amendment as P.L. 100-607, §802(b)(1)(B).
[104] P.L. 100-607, §802(b)(1)(C), struck out "(j)" and substituted "(k)".
P.L. 100-628, §602(b)(1)(C), made the same amendment as P.L. 100-607, §802(b)(1)(C).
[105] P.L. 100-607, §802(b)(1)(D), struck out "(k)" and substituted "(l)".
P.L. 100-628, §602(b)(1)(D), made the same amendment as P.L. 100-607, §802(b)(1)(D).
[106] P.L. 100-607, §801(a)(1), inserted "for the first fiscal year of payments under the grant and 66 2/3 percent of the costs of providing such services for any subsequent fiscal year of payments".
P.L. 100-628, §601(a)(1), made the same amendment as P.L. 100-607, §801(a)(1).

payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the[107] grant.

(B)(i) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(ii) Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services).

(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.[108]

(B) the Secretary determines that it is not feasible for the applicant to comply with such requirement.

(f) REQUIREMENT OF PROVISION OF CERTAIN HEALTH SERVICES.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that the applicant will, directly or through contract—

(1) provide health services at locations accessible to homeless individuals;

(2) provide to homeless individuals, at all hours, emergency health services;

(3) refer homeless individuals as appropriate to medical facilities for necessary hospital services;

(4) refer for mental health services homeless individuals who are mentally ill to entities that provide such services, unless the applicant will provide such services pursuant to subsection (g);

(5) provide outreach services to inform homeless individuals of the availability of health services; and

(6) aid homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs.

(g) OPTIONAL PROVISION OF MENTAL HEALTH SERVICES.—A grantee under subsection (a) may expend amounts received pursuant to such subsection for the purpose of providing mental health services to homeless individuals.

(h) TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.[109]

(i)[110] RESTRICTIONS ON USE OF GRANT FUNDS.—(1) The Secretary may not, except as provided in paragraph (2), make a grant under subsection (a) to an applicant unless the applicant agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(A) for any purpose other than the purposes described in subsections (a) and (g);

(B) to provide inpatient services, except with respect to residential treatment for substance abuse provided in settings other than hospitals;

(C) to make cash payments to intended recipients of health services or mental health services; or

(D) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(2) If the Secretary finds that the purpose described in subsection (a) cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified applicant, waive the restriction established in paragraph (1)(D).

(j)[111] LIMITATION ON CHARGES FOR SERVICES.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that, whether health services are provided directly or through contract—

(1) health services under the grant will be provided without regard to ability to pay for the health services; and

(2) if a charge is imposed for the delivery of health services, such charge—

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[107]P.L. 100-607, §801(a)(2), struck out "in such" and substituted "for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the".
P.L. 100-628, §601(a)(2), made the same amendment as P.L. 100-607, §801(a)(2).
[108]P.L. 100-607, §801(c), amended paragraph (2) in its entirety.
P.L. 100-628, §601(c), made the same amendment as P.L. 100-607, §801(c).
[109]P.L. 100-607, §802(a)(2), added this subsection (h).
P.L. 100-628, §602(a)(2), made the same amendment as P. L. 100-607, §802(a)(2).
[110]P.L. 100-607, §802(a)(1), redesignated subsections (h) through (q) as subsections (i) through (r), respectively.
P.L. 100-628, §602(a)(1), made the same amendment as P.L. 100-607, §802(a)(1).
[111]See footnote 110.

(A) will be made according to a schedule of charges that is made available to the public;

(B) will not be imposed on any homeless individual with an income less than the official poverty level; and

(C) will be adjusted to reflect the income and resources of the homeless individual involved.

(k)[112] REQUIREMENTS WITH RESPECT TO ADMINISTRATION.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(2) agrees to establish an ongoing program of quality assurance with respect to the health services provided under the grant;

(3) agrees to ensure the confidentiality of records maintained on homeless individuals receiving health services under the grant;

(4) with respect to providing health services to any population of homeless individuals a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan; and

(5) agrees to submit to the Secretary an annual report that describes the utilization and costs of health services provided under the grant and that provides such other information as the Secretary determines to be appropriate.

(l)[113] LIMITATION ON ADMINISTRATIVE EXPENSES OF GRANTEE.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that the applicant will not expend more than 10 percent of amounts received pursuant to such subsection for the purpose of administering the grant.

(m)[114] USE OF GRANT FUNDS FOR REFERRALS TO CERTAIN ADVOCACY SYSTEMS.—A grantee under subsection (a) may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received under subsection (a) for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under such Act, to systems that provide advocacy services under such Act.

(n)[115] USE OF SELF-HELP ORGANIZATIONS.—

(1) are established and managed by current and former recipients of mental health services, or substance abuse services, who have been homeless individuals; and

(2) with respect to the provision of health services described in subsection (b)(3), are organizations qualified under subparagraph (B) of such subsection.

(o)[116] TECHNICAL ASSISTANCE.—(1) The Secretary may, without charge to any grantee under subsection (a), provide technical assistance to any such grantee with respect to the planning, development, and operation of programs to carry out the purpose described in such subsection. The Secretary may provide such technical assistance directly, through contract, or through grants.

(2) Of the amounts appropriated pursuant to subsection (q)(1) for a fiscal year[117], the Secretary may expend not more than $2,000,000 for the purpose of carrying out paragraph (1).

(p)[118] ANNUAL REPORTS BY SECRETARY.—Not later than January 10 of each year, the Secretary shall submit to the Congress a report describing the utilization and costs of health services provided under subsection (a) during the immediately preceding fiscal year.

(q)[119] FUNDING.—(1) There are authorized to be appropriated to carry out this section $61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991[120].

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[112]See footnote 110.
[113]See footnote 110.
[114]See footnote 110.
[115]See footnote 110.
[116]See footnote 110.
[117]P.L. 100-607, §803(b), struck out "(p)(1)" and substituted "(q)(1) for a fiscal year".
P.L. 100-628, §603(b), made the same amendment as P.L. 100-607, §803(b).
[118]See footnote 110.
[119]See footnote 110.
[120]P.L. 100-607, §804, struck out "$50,000,000 for fiscal year 1987 and $30,000,000 for fiscal year 1988" and substituted "$61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991".
P.L. 100-628, §604, made the same amendment as P.L. 100-607, §804.

(2) Amounts received by a grantee pursuant to subsection (a) remaining unobligated at the end of the fiscal year in which the amounts were received shall remain available to the grantee during the succeeding fiscal year for the purpose described in such subsection.

(r)[121] DEFINITIONS.—For purposes of this section:

(1) The term "health services" means primary health services and substance abuse services.

(2) The term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing[122] .

(3) The term "medically underserved population" has the meaning given such term in section 330(b)(3).

(4) The term "official poverty level" means the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(5) The term "organization" includes individuals, corporations, partnerships, companies, and associations.

(6) The term "primary health services" has the meaning given such term in section 330(b)(1).

(7) The term "substance abuse" has the meaning given such term in section 536(4).

(8) The term "substance abuse services" includes detoxification and residential treatment for substance abuse provided in settings other than hospitals.

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REGULATION OF BIOLOGICAL PRODUCTS

SEC. 351. [42 U.S.C. 262] (a) No person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession, any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man, unless (1) such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product has been propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Administrator as hereinafter authorized, to propagate or manufacture, and prepare such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; and (2) each package of such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product is plainly marked with the proper name of the article contained therein, the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected beyond reasonable doubt to yield their specific results. The suspension of revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid which has been sold and delivered by the licensee prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid has been notified by the Administrator not to sell, barter, or exchange the same.

(b) No person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid so as to falsify such label or mark.

(c) Any officer, agent, or employee of the Federal Security Agency, authorized by the Administrator for the purpose, may during all reasonable hours enter and inspect any establishment for the propagation or manufacture and preparation of any virus,

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[121] See footnote 110.

[122] P.L. 100-607, §803(a), inserted "and an individual who is a resident in transitional housing". P.L. 100-628, §603(a), made the same amendment as P.L. 100-607, §803(a).

serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession.

(d)(1) Licenses for the maintenance of establishments for the propagation or manufacture and preparation of products described in subsection (a) of this section may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations, and licenses for new products may be issued only upon a showing that they meet such standards. All such licenses shall be issued, suspended, and revoked as prescribed by regulations and all licenses issued for the maintenance of establishments for the propagation or manufacture and preparation, in any foreign country, of any such products for sale, barter, or exchange in any State or possession shall be issued upon condition that the licensees will permit the inspection of their establishments in accordance with subsection (c) of this section.

(2)(A) Upon a determination that a batch, lot, or other quantity of a product licensed under this section presents an imminent or substantial hazard to the public health, the Secretary shall issue an order immediately ordering the recall of such batch, lot, or other quantity of such product. An order under this paragraph shall be issued in accordance with section 554 of title 5, United States Code.

(B) Any violation of subparagraph (A) shall subject the violator to a civil penalty of up to $100,000 per day of violation. The amount of a civil penalty under this subparagraph shall, effective December 1 of each year beginning 1 year after the effective date of this subparagraph, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest 1/10 of 1 percent. For purposes of this subparagraph, the term "base quarter", as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(e) No person shall interfere with any officer, agent, or employee of the Service in the performance of any duty imposed upon him by this section or by regulations made by authority thereof.

(f) Any person who shall violate, or aid or abet in violating, any of the provisions of this section shall be punished upon conviction by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

(g) Nothing contained in this Act shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act (U.S.C., 1940 edition, title 21, ch. 9).

(h)(1)(A) A partially processed biological product which is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man, which is not intended for sale in the United States, and which is intended for further manufacture into final dosage form outside the United States in a country listed under section 802(b)(A) of the Federal Food, Drug, and Cosmetic Act may, upon approval of an application meeting the requirements of subparagraph (B), be exported to a country listed under section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act. The Secretary may not approve an application to export such a product unless the Secretary determines that the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and the outside of the shipping package is labeled with the following statement: "This product may be sold or offered for sale only in the following countries: ", the blank space being filled with a list of the countries to which export of the drug is authorized.

(B) An application for the export of a partially processed biological product shall—

(i) describe the partially processed biological product to be exported,

(ii) list each country to which the product is to be exported,

(iii) contain a certification by the applicant that the product will not be exported to a country not listed under clause (ii),

(iv) identify the establishments in which the product is manufactured, and

(v) contain a certification by the applicant that the final product to be developed from the partially processed product is approved in the country to which it is to be exported or approval of the final product is being sought in such country.

(2) A product described in paragraph (1) is not subject to licensure under this section.

(3) If the Secretary determines that prohibiting the export of a product described in paragraph (1) is necessary for protection of the public health in the United States or the country to which it is to be exported, the Secretary may not approve an application under paragraph (1) for the export of such product.

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CERTIFICATION OF LABORATORIES

SEC. 353. [42 U.S.C. 263a][123]

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(i) SUSPENSION, REVOCATION, AND LIMITATION.—

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(3) INELIGIBILITY TO OWN OR OPERATE LABORATORIES AFTER REVOCATION.—No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVIII of the Social Security Act because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

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(n) INFORMATION.—On April 1, 1990 and annually thereafter, the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

(2) a list of laboratories—

(A) which have had their certificates revoked, suspended, or limited under subsection (i), or

(B) which have been the subject of a sanction under subsection (l),

together with a statement of the reasons for the revocation, suspension, limitation, or sanction,

(3) a list of laboratories subject to intermediate sanctions under subsection (h) together with a statement of the reasons for the sanctions,

(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

(5) a list of laboratories against which the Secretary has taken action under subsection (j) together with a statement of the reasons for such action, and

(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act.

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

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PART H—ORGAN TRANSPLANTS

ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS

SEC. 371. [42 U.S.C. 273] (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

(2) The Secretary may make grants for the establishment, initial operation, consolidation,[124] and expansion of qualified organ procurement organizations described in subsection (b).

(3) The Secretary may make grants for special projects designed to increase the number of organ donors.[125]

(4)[126] In making grants under paragraphs (1) and (2), the Secretary shall—

(A) take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ

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[123] P.L. 100-578, §2, added §353.
[124] P. L. 100-607, §402(a)(1), inserted "consolidation,".
[125] P.L. 100-607, §402(a)(2), added this paragraph (3).
[126] P.L. 100-607, §402(a)(2), redesignated paragraph (3) as paragraph (4).

Transplant Act[127], [128]

(B) give special consideration to applications which cover geographical areas which are not adequately served by organ procurement organizations, and[129]

(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.[130]

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size such that[131] (unless the service area comprises an entire State) the organization can reasonably expect to procure organs from not less than 50[132] donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility[133],

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome[134],

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs equitably[135] among transplant[136] patients according to established medical criteria,

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[127] P.L. 98-507.

[128] P.L. 100-607, §402(a)(3)(A), struck out "and".

[129] P.L. 100-607, §402(a)(3)(B), struck out the period and substituted ", and".

[130] P.L. 100-607, §402(a)(3)(C), added subparagraph (C).

[131] P.L. 100-607, §402(c)(1)(A)(i), struck out "which" and substituted "such that".

[132] P.L. 100-607, §402(c)(1)(A)(ii), struck out "will include at least fifty potential organ" and substituted "the organization can reasonably expect to procure organs from not less than 50".

[133] P.L. 100-607, §402(c)(2), inserted "or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility".

[134] P.L. 100-607, §402(c)(1)(B), struck out "372(b)(2)(D)" and substituted "372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome".

[135] P.L. 100-607, §402(c)(1)(C)(i), inserted "equitably".

[136] P.L. 100-607, §402(c)(1)(C)(ii), struck out "centers and".

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors,[137]

(J) evaluate annually the effectiveness of the organiation in acquiring potentially available organs, and[138]

(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.[139]

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ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

SEC. 372. [42 U.S.C. 274] (a) The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b)(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity which is not engaged in any activity unrelated to organ procurement, and

(B) have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 371), transplant centers, voluntary health associations, and the general public.

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,[140]

(C)[141] maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D)[142] assist organ procurement organizations in the distribution of organs[143],

(E)[144] adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,[145]

(F)[146] prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis)[147], samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatability[148] of such individuals with organ donors,

(G)[149] coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

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[137] P.L. 100-607, §402(c)(1)(D)(i), struck out "and".
[138] P.L. 100-607, §402(c)(1)(D)(ii), struck out the period and substituted ", and".
[139] P.L. 100-607, §402(c)(1)(D)(iii), added subparagraph (K).
[140] P.L. 100-607, §403(a)(1)(B), added this subparagraph (B).
[141] P.L. 100-607, §403(a)(1)(A), redesignated subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively.
[142] See footnote 141.
[143] P.L. 100-607, §403(a)(2), struck out "which cannot be placed within the service areas of the organizations".
[144] See footnote 141.
[145] P.L. 100-607, §403(a)(3), inserted "including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,".
[146] See footnote 141.
[147] P.L. 100-607, §403(a)(4), inserted "(and, to the extent practicable, among regions or on a national basis)".
[148] As in original. Should be "compatibility".
[149] See footnote 141.

(H)[150] provide information to physicians and other health professionals regarding organ donation,[151]

(I)[152] collect, analyze, and publish data concerning organ donation and transplants, and[153]

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.[154]

(c) The Secretary shall establish procedures for—

(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

(2) the consideration by the Secretary of such critical comments.[155]

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TITLE V—MISCELLANEOUS

PART D[156]—MISCELLANEOUS PROVISIONS RELATING TO ALCOHOL ABUSE AND ALCOHOLISM AND DRUG ABUSE

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CONFIDENTIALITY OF RECORDS

SEC. 544.[157] [42 U.S.C. 290dd-3] (a) Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b)(1) The content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

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[150] See footnote 141.
[151] P.L. 100-607, §403(a)(5)(A), struck out "and".
[152] See footnote 141.
[153] P.L. 100-607, §403(a)(5)(B), struck out a period and substituted ", and".
[154] P.L. 100-607, §403(a)(5)(C), added subparagraph (J).
[155] P.L. 100-607, §403(b), added subsection (c).
[156] P.L. 100-77, §611(1), redesignated part C as part D.
[157] P.L. 100-77, §611(2), redesignated §523 as §544.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

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TITLE VI—ASSISTANCE FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

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STATE PLANS

SEC. 604. [42 U.S.C. 291d] (a) Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) will have authority to carry out such plan in conformity with this part;

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 603 and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 601(a) or (b) in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) and regulations prescribed under section 603 and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4);

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 603, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8)[148] provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10);

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

(13) Effective [149] July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of, physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

(b) The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a). If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a), the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modification complies with the provisions of such subsection, the Surgeon General shall there upon approve such plan or modification.

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TITLE VII—HEALTH RESEARCH AND TEACHING FACILITIES AND TRAINING OF PROFESSIONAL HEALTH PERSONNEL

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PART C—STUDENT ASSISTANCE

Subpart I—Federal Program of Insured Loans to Graduate Students in Health Professions Schools

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[148] See footnote 22.
[149] As in original. Possibly should be "effective".

ELIGIBILITY OF STUDENT BORROWERS AND TERMS OF FEDERALLY INSURED STUDENT LOANS

SEC. 731. [42 U.S.C. 294d] (a) A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student (as defined in section 770(c)(2) (as such section was in effect on September 30, 1985)) at the eligible institution;

(iii) has agreed that all funds received under such loan shall be used solely for tuition other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses, incurred by such students;

(iv) if required under section 3 of the Military Selective Service Act to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(v) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid;

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(iv) if required under section 3 of the Military Selective Service Act to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(2) evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him would not, under the applicable law, create a binding obligation, an endorsement may be required;

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the later of—

(i) the date on which—

(I) the borrower ceases to be a participant in an accredited internship or residency program of not more than four years in duration;

(II) the borrower completes the fourth year of an accredited internship or residency program of more than four years in duration; or

(III) the borrower, if not a participant in a program described in subclause (I) or (II), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or

(ii) the date on which a borrower who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of two years or a participant in a full-time educational activity not in excess of two years, which—

(I) is directly related to the health profession for which the borrower prepared at an eligible institution, as determined by the Secretary; and

(II) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in a program described in subclause (I) or (II) of clause (i) or prior to the completion of the borrower's participation in such program,

except as provided in subparagraph (C), except that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and except that the note or other written instrument may contain such provisions relating to repayment in the event of default in

the payment of interest or in the payment of the costs of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal and interest need not be paid, but interest shall accrue, during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution (or at an institution defined by section 435(b) of the Higher Education Act of 1965), (ii) not in excess of four years during which the borrower is a participant in an accredited internship or residency program (including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i)), (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States, (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act, (v) not in excess of three years during which the borrower is a member of the National Health Service Corps, (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973, or (vii) any period not in excess of two years which is described in subparagraph (B)(ii), and any such period shall not be included in determining the 25-year period provided in clause (B) above;

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed and defined by the Secretary (within the limits set forth in subsection (b)) on a national, regional, or other appropriate basis, which interest shall be compounded not more frequently than[160] semiannually and payable in installments over the period of the loan except as provided in subparagraph (C), except that the note or other written agreement may provide that payment of any interest may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal for the purposes of calculating a repayment schedule;

(E) offers, in accordance with criteria prescribed by regulation by the Secretary, a schedule for repayment of principal and interest under which payment of a portion of the principal and interest otherwise payable at the beginning of the repayment period (as defined in such regulations) is deferred until a later time in the period;

(F) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G) provides that the check for the proceeds of the loan shall be made payable jointly to the borrower and the eligible institution in which the borrower is enrolled; and

(H) contains such other terms and conditions consistent with the provisions of this subpart and with the regulations issued by the Secretary pursuant to this subpart, as may be agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay to the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan.

(b) No maximum rate of interest prescribed and defined by the Secretary for the purpose of paragraph (2)(D) of subsection (a) may exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3 percentage points, rounded to the next higher one-eighth of 1 percent.

(c) The total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this subpart shall not be less than the annual interest on the outstanding principal, except as provided in subsection (a)(2)(C), unless the borrower, in the written agreement described in subsection (a)(2), agrees to make payments during any year or any repayment period in a lesser amount.

(d) No provision of any law of the United States (other than subsections (a)(2)(D) and (b) of this section) or of any State that limits the rate or amount of interest payable on loans shall apply to a loan insured under this subpart.

(e) With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.[161]

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[160] P.L. 100-607, §602(e), inserted "not more frequently than".
[161] P.L. 100-607, §602(f), added subsection (e).

CERTIFICATE OF FEDERAL LOAN INSURANCE—EFFECTIVE DATE OF INSURANCE

SEC. 732. [42 U.S.C. 294e] (a)(1) If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a borrower described in section 731(a)(1). Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to subsection (c).

(3) An application submitted pursuant to subsection (a)(1) shall contain (A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to subsection (c), and (B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statements during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b)(1) In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each loan made by an eligible lender as provided in subsection (a), the Secretary may, in accordance with regulations consistent with section 728, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 728, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

(c)(1) The Secretary shall, pursuant to regulations, charge for insurance on each loan under this subpart a premium in an amount not to exceed 8 percent of the unpaid principal amount of such loan (excluding interest added to principal), payable in advance at the time the loan is made and in such manner as may be prescribed by the Secretary. Such regulations may provide that such premium shall not be payable, or if paid shall be refundable, with respect to any period after default in the payment of principal or interest or after the borrower has died or become totally and permanently disabled, if (A) notice of such default or other event has been duly given, and (B) requests for payment of the loss insured against has been made or the Secretary has made such payment on his own motion pursuant to section 733(a).

(2) The Secretary may not increase the percentage on the principal balance of loans charged pursuant to paragraph (1) for insurance premiums, unless the Secretary has, prior to any such increase—

(A) requested a qualified public accounting firm to evaluate whether an increase in such percentage is necessary to ensure the solvency of the student loan fund established by section 734, and to determine the amount of such an increase, if necessary; and

(B) such accounting firm has recommended such an increase and has determined the amount of such increase necessary to ensure the solvency of such fund.

The Secretary may not increase such percentage in excess of the maximum percentage permitted by paragraph (1) or increase such percentage by an amount in excess of the amount of the increase determined by a qualified accounting firm pursuant to this paragraph.

(d) The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to (1) another eligible lender (including a public entity in the business of purchasing student loans)[162], or (2) the Student Loan Marketing Association.

(e) The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a), the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation. If the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b), the Secretary may amend that certificate accordingly.

(f) Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's debts into a single instrument, except that the portion of such debt that is insured under this subpart shall not be consolidated on terms less favorable to the borrower than if no consolidation had occurred and no loan under this subpart may be consolidated with any other loan if, as a result of such consolidation, the Federal Government becomes liable for any payment of principal or interest under the provisions of section 439(o) of the Higher Education Act of 1965.

DEFAULT OF STUDENT UNDER FEDERAL LOAN INSURANCE PROGRAM

SEC. 733. [42 U.S.C. 294f] (a) Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h), commencement and prosecution of an action[163]) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined.

(b) Upon payment by the Secretary of the amount of the loss pursuant to subsection (a), the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.[164]

(c) Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance.

(d) Nothing in this section or in this subpart shall be construed to excuse the eligible lender or[165] holder of a federally insured loan from exercising reasonable care and diligence in the making of loans under the provisions of this subpart and from exercising a substantial effort in the collection of loans under the provisions of this subpart. If the Secretary, after reasonable notice and opportunity for hearing to an

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[162] P.L. 100-607, §602(g), inserted "(including a public entity in the business of purchasing student loans)".
[163] P.L. 100-607, §602(k)(1), struck out "if appropriate, commencement of a suit" and substituted "subject to subsection (h), commencement and prosecution of an action".
[164] P.L. 100-607, §602(k)(2)(A), added this sentence.
[165] P.L. 100-607, §602(h), inserted "eligible lender or".

eligible lender, finds that the lender has failed to exercise such care and diligence, to exercise such substantial efforts, to make the reports and statements required under section 732(a)(3), or to pay the required Federal loan insurance premiums, he shall disqualify that lender from obtaining further Federal insurance on loans granted pursuant to this subpart until he is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence, exercise substantial effort, or comply with such requirements, as the case may be.

(e) As used in this section—

(1) the term "insurance beneficiary" means the insured or its authorized assignee in accordance with section 732(d);

(2) the term "amount of the loss" means, with respect to a loan, the unpaid balance of the principal amount and interest on such loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved[166]; and

(3) the term "default" includes only such defaults as have existed for (A) 120 days in the case of a loan which is repayable in monthly installments, or (B) 180 days in the case of a loan which is repayable in less frequent installments.

(f) The Secretary may, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such loans. Procedures for reduction of payments under the medicare program are provided under section 1892 of the Social Security Act.[167]

(g) A debt which is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of[168] title 11, United States Code, only if such discharge is granted—

(1) after the expiration of the 5-year period beginning on the first date, as specified in subparagraphs (B) and (C) of section 731(a)(2), when repayment of such loan is required;

(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) to the borrower and the discharged debt.

(h)(1) With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a), require an eligible lender or holder to commence and prosecute an action for such default unless—

(A) in the determination of the Secretary—

(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(B) for such loans made before the date of the enactment of the Health Professions Reauthorization Act of 1988, the loan involved was made in an amount of less than $5,000; or

(C) for such loans made after such date, the loan involved was made in an amount of less than $2,500.

(2) With respect to an eligible institution that has commenced an action pursuant to subsection (a), the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the eligible institution notifies the Secretary that judgment has been entered with respect to the action.[169]

(i) The Secretary may establish reasonable limits for default rates for borrowers in each of the health professions identified in section 737(1). If the eligible institutions within any of the health professions, taken as a group, exceed such limits, the Secretary may suspend, terminate, or otherwise restrict the eligibility of such group of schools for borrowing under this section.[170]

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[166] P.L. 100-607, §602(i), inserted ", less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved".
[167] P.L. 100-360, §411(f)(10)(C)(ii), added this sentence.
[168] P.L. 100-607, §602(j), inserted "any chapter of".
[169] P.L. 100-607, §602(k)(2)(B), added subsection (h).
[170] P.L. 100-607, §602(k)(2)(B), added subsection (i).

STUDENT LOAN INSURANCE FUND

SEC. 734. [42 U.S.C. 294g] (a) There is hereby established a student loan insurance fund (hereinafter in this section referred to as the "fund") which shall be available without fiscal year limitation to the Secretary for making payments in connection with the collection or default of loans insured by him under this subpart. All amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with his operations under this subpart, and any other moneys, property, or assets derived by the Secretary from his operations in connection with this section, shall be deposited in the fund. All payments in connection with the default of loans insured by the Secretary under this subpart shall be paid from the fund. Moneys in the fund not needed for current operations under this section may be invested in bonds or other obligations guaranteed as to principal and interest by the United States.

(b) If at any time the moneys in the fund are insufficient to make payments in connection with the collection or default of any loan insured by the Secretary under this subpart, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriation Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

POWERS AND RESPONSIBILITIES

SEC. 735. [42 U.S.C. 294h] (a) In the performance of, and with respect to, the functions, powers, and duties vested in him by this subpart, the Secretary may—

(1) prescribe such regulations as may be necessary to carry out the purposes of this subpart;

(2) sue and be sued in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this subpart without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office. No attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under his control, and nothing herein shall be construed to except litigation arising out of activities under this subpart from the application of sections 517 and 547 of title 28 of the United States Code;

(3) include in any contract for Federal loan insurance such terms, conditions, and convenants[171] relating to repayment of principal and payment of interest, relating to his obligations and rights and to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved; and any term, condition, and covenant made pursuant to this clause or any other provisions of this subpart may be modified by the Secretary if he determines that modification is necessary to protect the financial interest of the United States;

(4) subject to the specific limitations in the subpart, consent to the modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note or other instrument evidencing a loan which has been insured by him under this subpart; and

(5) enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right or redemption.

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[171] As in original. Should be "covenants".

(b) The Secretary shall, with respect to the financial operations arising by reason of this subpart—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act; and

(2) maintain with respect to insurance under this subpart an integral set of accounts.

(c)(1) The Secretary may enter into a written contract with a borrower under which the Secretary agrees to assume the obligation of paying an amount, not to exceed $10,000 in any 12-month period, toward the principal and interest due on any loan made to the borrower and insured under this subpart and the borrower agrees to serve, either as a member of the National Health Service Corps or in private practice pursuant to section 338C (as determined by the Secretary), in a health manpower shortage area (designated under section 332) which is described in section 338C(a)(2) for a continuous period of (A) not less than 12 months for each 12-month period the Secretary assumes such obligation under the agreement, or (B) 24 months, whichever is greater.

(2) Except as provided in paragraphs (3) and (4), if an individual, who has entered into a written contract under paragraph (1), for any reason breaches his contract obligations with respect to serving in a health manpower shortage area for the period specified in the contract, the United States shall be entitled to recover damages from such individual in an amount determined in accordance with the formula

$$A = 3\emptyset \left(\frac{t - s}{t} \right)$$

in which "A" is the amount the United States is entitled to recover; "Ø" is the sum of the amounts paid by the Secretary under the contract to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with the contract. Any amount of damages which the United States is entitled to recover under this paragraph shall be paid to the United States not later than one year after the date of the breach of such contract obligations.

(3) The United States shall not be entitled to recover any damages from an individual under paragraph (2) upon the death of the individual.

(4) The Secretary shall by regulation provide for the waiver or suspension of any obligation of service or payment of any or all of the damages to which the United States is entitled under paragraph (2) whenever the Secretary determines that compliance by an individual with the contract is impossible or would involve extreme hardship to the individual and that recovery of such damages with respect to the individual would be unconscionable.

PARTICIPATION BY FEDERAL CREDIT UNIONS IN FEDERAL, STATE, AND PRIVATE STUDENT LOAN INSURANCE PROGRAMS

SEC. 736. [42 U.S.C. 294i] Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the Administrator of the National Credit Union Administration, have power to make insured loans to eligible students in accordance with the provisions of this subpart relating to Federal insured loans.

DEFINITIONS

SEC. 737. [42 U.S.C. 294j] As used in this subpart:

(1) The term "eligible institution" means, with respect to a fiscal year, a school of medicine, osteopathic medicine[172], dentistry, veterinary medicine, optometry, podiatric medicine[173] pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology.

(2) The term "eligible lender" means an eligible institution, an agency or instrumentality of a State, a financial or credit institution (including an insurance company)

[172] P.L. 100-607, §629(b)(2), struck out "osteopathy" and substituted "osteopathic medicine".
[173] P.L. 100-607, §628(6), struck out "podiatry" and substituted "podiatric medicine".

which is subject to examination and supervision by an agency of the United States or of any State,[174] a pension fund approved by the Secretary for this purpose, or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary[175].

(3) The term "line of credit" means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(4) The term "school of allied health" means a program in a school of allied health (as defined in section 701(10)) which leads to a masters' degree or a doctoral degree.

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REPAYMENT BY THE SECRETARY OF LOANS OF DECEASED OR DISABLED BORROWERS

SEC. 738. [42 U.S.C. 294k] If a borrower who has received a loan dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan from the fund established under section 734.

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TITLE XIII—HEALTH MAINTENANCE ORGANIZATIONS

REQUIREMENTS FOR HEALTH MAINTENANCE ORGANIZATIONS

SEC. 1301. [42 U.S.C. 300e] (a) For purposes of this title, the term "health maintenance organization" means a public or private entity which is organized under the laws of any State and[176] which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b), and (2) is organized and operated in the manner prescribed by subsection (c).

(b) A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this title, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A), the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician.[177] A health maintenance organization may include a health service, defined as a supplemental health service by section 1302(2), in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 1310(d)) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is

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[174] P.L. 100-607, §602(l)(1), struck out "or".

[175] P.L. 100-607, §602(l)(2), inserted ", or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary".

[176] P.L. 100-517, §2, struck out "legal entity" and substituted "public or private entity which is organized under the laws of any State and".

[177] P.L. 100-517, §3, added this sentence.

entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this title referred to as "supplemental health services payments") as the health maintenance organization may require in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 1302(2)). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 1310(d)) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), at least 90 percent of[178] the services of a physician which are provided as basic health services shall be provided through—

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B) Subparagraph (A) does not apply to the provision of the services of a physician—

(i) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(ii) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(C) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require, but only to the extent that such requirements are designed to insure the delivery of quality health care services and sound fiscal management.

(D) For purposes of this paragraph the term "health professional" means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members with reasonable promptness and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week, except that a health maintenance organization which has a service area located wholly in a nonmetropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency health care service and if there is an insufficient number of providers of that basic health service within the service area who will provide such

[178] P.L. 100-517, §4(a), inserted "at least 90 percent of".

service to members of the health maintenance organization. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources.

(c) Each health maintenance organization shall—

(1)(A) have—

(i) a fiscally sound operation, and

(ii) adequate provision against the risk of insolvency,

which is satisfactory to the Secretary, and[179] (B) have administrative and managerial arrangements satisfactory to the Secretary;

(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may (A) obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year, (B) obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization, (C) obtain insurance or make other arrangements for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year, and (D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions;

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary;

(4) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(5)[180] be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

(6)[181] have organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians and other health professionals of the process followed in the provision of health services;

(7)[182] adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization—

(A) a contractual arrangement with any hospital that is regularly used by the members of such organization prohibiting such hospital from holding any such member liable for payment of any fees which are the legal obligation of such organization;

(B) insolvency insurance, acceptable to the Secretary;

(C) adequate financial reserve, acceptable to the Secretary; and

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[179] P.L. 100-517, §5(a)(1), amended subparagraph (A) in its entirety.
[180] P.L. 100-517, §5(b), repealed paragraph (5) and redesignated paragraph (6) as paragraph (5).
[181] P.L. 100-517, §5(b), redesignated paragraph (7) as paragraph (6).
[182] P.L. 100-517, §5(b), redesiganted paragraph (8) as paragraph (7).

(D) other arrangements, acceptable to the Secretary, to protect members, except that the requirements of this paragraph shall not apply to a health maintenance organization if applicable State law provides the members of such organization with protection from liability for payment of any fees which are the legal obligation of such organization; and

(8)[183] provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization.[184] Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.[185]

DEFINITIONS

SEC. 1302. [42 U.S.C. 300e-1] For purposes of this title:

(1) The term "basic health services" means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985. For purposes of this paragraph, the term "home health services" means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term "supplemental health services" means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist or other health care personnel (as the case may be) licensed to provide such service.

(3) The term "member" when used in connection with a health maintenance organization means an individual who has entered into a contractual agreement, or on

[183] P.L. 100-517, §5(b), redesignated paragraph (9) as paragraph (8).
[184] P.L. 100-517, §5(a)(2), added this sentence.
[185] See footnote 184.

whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term "medical group" means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance oranization[186] becomes a qualified health maintenance organization as defined in section 1310(d), or as authorized by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

(5) The term "individual practice association" means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff.

(6) The term "health systems agency" means an entity which is designated in accordance with section 1515 of this Act.

(7) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term "community rating system" means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

[186] As in original. Should be "organization".

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.[187]

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members;

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10, United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5, United States Code) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term "non-metropolitan area" means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

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EMPLOYEES' HEALTH BENEFITS PLANS

SEC. 1310. [42 U.S.C. 300e-9]

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(d) For purposes of this section, the term "qualified health maintenance organization" means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to becomes a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).[188]

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[187] P.L. 100-517, §6(b), amended this sentence in its entirety.

[188] Effective October 24, 1995, this subsection is repealed. Section 1310, as added by P.L. 100-517, §7(b), will become effective.

CONTINUED REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

SEC. 1312. [42 U.S.C. 300e-11] (a) If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this title as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 1310—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 1301(b), or

(3) is not organized or operated in the manner prescribed by section 1301(c),

the Secretary may take the action authorized by subsection (b).

(b)(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 1310(d)(1), a determination described in subsection (a), the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 1310 until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 1310, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this title, a determination described in subsection (a), the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this title for the grant, contract, loan, or loan guarantee.

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FINANCIAL DISCLOSURE

SEC. 1318. [42 U.S.C. 300e-17] (a) Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1124 of the Social Security Act by disclosing entities and the information required to be supplied under section 1902(a)(38) of such Act.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) For the purposes of this section the term "party in interest" means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on[189] other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Each health maintenance organization shall make the information reported pursuant to subsection (a) available to its enrollees upon reasonable request.

(d) The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3).

[(e) Repealed.[190]]

(f) Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) shall be ineligible for any Federal assistance under this title until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 1310.

(h) Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

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TITLE XVI—HEALTH RESOURCES DEVELOPMENT

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PART C—GENERAL PROVISIONS

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APPLICATIONS

SEC. 1621. [42 U.S.C. 300s-1]

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(b)(1) * * *

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[189] As in original. Possibly should be "or".
[190] P.L. 99-660, §810; 100 Stat. 3801.

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

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[*Internal References.*—There are citations to the Public Health Service Act in Social Security Act §§501(b); 1101(a); 1121(a) and (c); 1122(b) and (d), 1124(a); 1138(a) and (b); 1833(m); 1842(b); 1861(s), (t), (v), (aa), and (ii); 1875(c); 1876(b), (e), and (i); 1883(b); 1892(a) and (b); 1902(e); 1903(g) and (m); and 1920(b). Social Security Act §1902(a) and the catchlines to title V; §1124; title XVIII, §1861(o), and title XIX have footnotes referring to P.L. 78-410.]

P.L. 79-291, Approved December 29, 1945 (59 Stat. 669)
[International Organizations Immunities Act]

* * * * * * *

TITLE I

SECTION 1. [22 U.S.C. 288] For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or makng an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

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SEC. 10. [22 U.S.C. 288 note] This title may be cited as the "International Organizations Immunities Act".

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[*Internal References.*—Social Security Act §210(a) cites the International Organizations Immunities Act (59 Stat. 669). Social Security Act title II has a footnote referring to P.L. 79-291.]

Provisions Affecting Social Security Programs
P.L. 79-396, Approved June 4, 1946 (60 Stat. 239)
National School Lunch Act

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SEC. 12. [42 U.S.C. 1760]

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(e) The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

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SEC. 17. [42 U.S.C. 1766]

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(p)(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program.

(2) For purposes of this subsection—

(A) the term "adult day care center" means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term "proprietary title XIX or title XX center" means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.[1]

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(4) For the purpose of establishing eligibility for free or reduced-price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.[2]

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act (42 U.S.C. 1381 et seq.).[3]

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1612(b) and 1613(a) have footnotes referring to P.L. 79-396.]

P.L. 79-733, Approved August 14, 1946 (60 Stat. 1090)
[Agricultural Marketing Act of 1946]

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TITLE II

[7 U.S.C. 1621 note] This title may be cited as the "Agricultural Marketing Act of 1946".

* * * * * * *

SEC. 205. [7 U.S.C. 1624] (a) In carrying out the provisions of title II of this Act, the Secretary of Agriculture may cooperate with other branches of the Government, State agencies, private research organizations, purchasing and consuming organizations, boards of trade, chambers of commerce, other associations of business or trade

[1] P.L. 100-175, §401, added subsection (p).
[2] P.L. 100-460, §641(a), added paragraph (4).
[3] P.L. 100-460, §641(b), added paragraph (5).

organizations, transportation and storage agencies and organizations, or other persons or corporations engaged in the production, transportation, storing, processing, marketing, and distribution of agricultural products whether operating in one or more jurisdictions. The Secretary of Agriculture shall have authority to enter into contracts and agreements under the terms of regulations promulgated by him with States and agencies of States, private firms, institutions, and individuals for the purpose of conducting research and service work, making and compiling reports and surveys, and carrying out other functions relating thereto when in his judgment the services or functions to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department of Agriculture. Contracts hereunder may be made for work to be performed within a period not more than four years from the date of any such contract, and advance, progress, or other payments may be made. The provisions of section 3648 (31 U.S.C., sec. 529[1]) and section 3709 (41 U.S.C., sec. 5) of the Revised Statutes shall not be applicable to contracts or agreements made under the authority of this section. Any unexpended balances of appropriations obligated by contracts as authorized by this section may, notwithstanding the provisions of section 5 of the Act of June 20, 1874, as amended (31 U.S.C., sec. 713), remain upon the books of the Treasury for not more than five fiscal years before being carried to the surplus fund and covered into the Treasury. Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.

(b) The Secretary of Agriculture shall promulgate such orders, rules, and regulations as he deems necessary to carry out the provisions of this title.

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[*Internal Reference.*—Social Security Act §218(b) cites the Agricultural Marketing Act of 1946 (7 U.S.C. 1624).]

P.L. 80-759, Approved June 24, 1948 (62 Stat. 604)
Military Selective Service Act

* * * * * * *

SECTION 1. [50 U.S.C. App. 451] (a) This Act may be cited as the "Military Selective Service Act".

(b) The Congress hereby declares that an adequate armed strength must be achieved and maintained to insure the security of this Nation.

(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.

(d) The Congress further declares, in accordance with our traditional military policy as expressed in the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, both Ground and Air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the Regular components of the Ground Forces and the Air Forces, and those in active service under this title, the National Guard of the United States, both Ground and Air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal Service and continued therein so long as such necessity exists.

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SEC. 12. [50 U.S.C. App. 462]

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(e) The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of individuals required by a proclamation of the President under section 3 to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.

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[1]P.L. 97-258, §4(b), deems this reference to be to 31 U.S.C. 3324(a) and (b).

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[*Internal References.*—Social Security Act §210(m) cites the Military Selective Service Act and SSAct §§205(c) and 208(h) have footnotes referring to P.L. 80-759.]

P.L. 81-171, Approved July 15, 1949 (63 Stat. 413)
Housing Act of 1949[1]

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SEC. 521. [42 U.S.C. 1490a] * * *
(a)(1) * * *

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing. In the case of assistance provided under this subparagraph with respect to a loan under section 502, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.[2]

(C) For persons of low income under section 502 or 517(a) who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this title, the National Housing Act, and the United States Housing Act of 1937) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

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(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act and the United States Housing Act of 1937.

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[*Internal References.*—Social Security Act §1612(b) cites the Housing Act of 1949 and §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P. L. 81-171. P.L. 94-375, §2(h), cites title V of the Housing Act of 1949.]

P.L. 81-474, Approved April 19, 1950 (64 Stat. 44)
[Navajo and Hopi Indians]

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[1]See P.L. 94-375, §2(h), with respect to exclusion of housing assistance under this law from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. Vol. II, p. 673.
[2]P.L. 100-242, §309, added this sentence.

SEC. 9. [25 U.S.C. 639] Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under section 403(a) of the Social Security Act) an amount, in addition to the amount prescribed to be paid to such State under such section, equal to 80 per centum of the total amount of contributions by the State toward expenditures during the preceding quarter by the State, under the State plan approved under the Social Security Act for aid to dependent children to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under section 403(a) of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such section.

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[*Internal Reference.*—Social Security Act §403(a) has a footnote referring to P. L. 81-474.]

P.L. 81-831, Enacted September 23, 1950 (64 Stat. 987, 991)
Internal Security Act of 1950

TITLE I—SUBVERSIVE ACTIVITIES CONTROL

(Subversive Activities Control Act of 1950)

* * * * * * *

DEFINITIONS

SEC. 3. [50 U.S.C. 782] For the purposes of this title—

(1) The term "person" means an individual or an organization.

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement referred to in section 2 of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, or (B) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization, and (C) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(4A) The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement, referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces: *Provided, however,* That any labor organization which is an affiliate in good standing of a national federation or other labor organization whose policies and activities have been directed to opposing Communist organizations, any Communist foreign government, or the world Communist movement, shall be presumed prima facie not to be a "Communist-infiltrated organization".

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization.

(6) The term "to contribute funds or services" includes the rendering of any personal service and the making of any gift, subscription, loan, advance, or deposit, of money or of anything of value, and also the making of any contract, promise, or agreement to contribute funds or services, whether or not legally enforcible.

(7) The term "facility" means any plant, factory or other manufacturing, producing or service establishment, airport, airport facility, vessel, pier, water-front facility, mine, railroad, public utility, laboratory, station, or other establishment or facility, or any part, division, or department of any of the foregoing. The term "defense facility" means any facility designated by the Secretary of Defense pursuant to section 5(b) of this title and which is in compliance with the provisions of such subsection respecting the posting of notice of such designation.

(8) The term "publication" means any circular, newspaper, periodical, pamphlet, book, letter, post card, leaflet, or other publication.

(9) The term "United States", when used in a geographical sense, includes the several States, Territories, and possessions of the United States, the District of Columbia, and the Canal Zone.

(10) The term "interstate or foreign commerce" means trade, traffic, commerce, transportation, or communication (A) between any State, Territory, or possession of the United States (including the Canal Zone), or the District of Columbia, and any place outside thereof, or (B) within any Territory or possession of the United States (including the Canal Zone), or within the District of Columbia.

(11) The term "Board" means the Subversive Activities Control Board created by section 12 of this title.

(12) The term "final order of the Board" means an order issued by the Board under section 13 or 13A[1] of this title, which has become final as provided in section 14 of this title.

(13) The term "advocates" includes advises, recommends, furthers by overt act, and admits belief in; and the giving, loaning, or promising of support or of money or anything of value to be used for advocating any doctrine shall be deemed to constitute the advocating of such doctrine.

(14) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist movement.

(15) The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(16) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(17) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(18) "Advocating the economic, international, and governmental doctrines of world communism" means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(19) "Advocating the economic and governmental doctrines of any other form of totalitarianism" means advocating the establishment of totalitarianism (other than world communism) and includes, but is not limited to, advocating the economic and governmental doctrines of fascism and nazism.

CERTAIN PROHIBITED ACTS

SEC. 4. [50 U.S.C. 783] (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: *Provided, however*, That this subsection shall not apply to the proposal of a constitutional amendment.

[1] As in original. Possibly should be "13a".

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(e) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.

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[*Internal References.*—Social Security Act §§202(u) and 210(a) cite the Internal Security Act of 1950.]

P.L. 82-183, Approved October 20, 1951 (65 Stat. 452)
Revenue Act of 1951

[Jenner Amendment]

* * * * * * *

PROHIBITION UPON DENIAL OF SOCIAL SECURITY ACT FUNDS

SEC. 618. [42 U.S.C. 1306a] No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to title I (other than section 3(a)(3) thereof), IV, X, XIV, or XVI (other than section 1603(a)(3) thereof) of the Social Security Act, as amended, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

* * * * * * *

[*Internal References.*—Social Security Act titles I, IV, X, XIV, and XVI (State) and §§402(a), 1002(a), and 1402(a) have footnotes referring to P. L. 82-183.]

P.L. 82-414, Approved June 27, 1952 (66 Stat. 163)
Immigration and Nationality Act

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DEFINITIONS

SECTION 101. [8 U.S.C. 1101] (a) As used in this Act—

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * * * *

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning * * * (ii) who is coming temporarily to the United States (a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; * * *

* * * * * * *

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency[1], for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney

[1] P.L. 100-525, §9(a)(1), struck out "Secretary of State" substituted "Director of the United States Information Agency".

General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him; or

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ALLOCATION OF IMMIGRANT VISAS WITHIN QUOTAS

SEC. 203. [8 U.S.C. 1153] (a) * * *

(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

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ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES

SEC. 207. [8 U.S.C. 1157]

* * * * * * *

(c)(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise[2] provided under paragraph (3)) as an immigrant under this Act.

(2) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42), be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(3) The provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

[2]P.L. 100-525, §9(h), struck out "otherwide" and substituted "otherwise".

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 101(a)(42) at the time of the alien's admission.

* * * * * * *

ASYLUM PROCEDURE

SEC. 208. [8 U.S.C. 1158] (a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided.

(c) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

* * * * * * *

SPECIAL AGRICULTURAL WORKERS

SEC. 210. [8 U.S.C. 1160] (a) LAWFUL RESIDENCE.—

(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

(B) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES AND RESIDENCE IN THE UNITED STATES.—The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(2) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) GROUP 1.—Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary residence status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) GROUP 2.—In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(C) NUMERICAL LIMITATION.—Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such

subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(4) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary residence status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) PROOF OF ELIGIBILITY.—

(A) IN GENERAL.—An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) DOCUMENTATION OF WORK HISTORY.—(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in

accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(A) CRIMINAL PENALTY.—Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) EXCLUSION.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

(c) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsection (a)(1)(C)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraph[3] (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges).

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

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[3]As in original. Should be "Paragraphs".

(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(3) No application fees collected by the Immigration and Naturalization Service (INS) pursuant to section 210(d) of the Immigration and Nationality Act (INA) may be used by the INS to offset the costs of the special agricultural worker legalization program until the INS implements the program consistent with the statutory mandate as follows:

(A) During the application period as defined in section 210(a)(1)(A) of the INA the INS may grant temporary admission to the United States, work authorization, and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in the INA.

(B) During the application period as defined in section 210(a)(B)(1)(B) of the INA any alien who has filed an application for adjustment of status within the United States as provided in section 210(b)(1)(A) pursuant to the provision of 8 CFR section 210.1(j) is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.[4]

(e) ADMINSTRATIVE AND JUDICAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICAL REVIEW.—

(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by

[4]P.L. 100-202, §101(a), added paragraph (3).

the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsections (a)(5)[a] and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

SEC. 210A. [8 U.S.C. 1161]

* * * * * * *

(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) IN GENERAL.—For each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any, determined under subsection (a)) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year. No such alien shall be admitted who is not admissible to the United States as an immigrant, except as otherwise provided under subsection (e).

(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for temporary residence under this subsection. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (c) to that of an alien lawfully admitted for permanent residence at the end of the 3-year period that begins on the date the alien was granted such temporary resident status.

(2) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under subsection (c), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under this section, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

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[a]P.L. 100-525, §2(m), struck out "(b)(3)" and substituted "(a)(5)".

(4) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(5) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUIRED.—

(A) FOR 3 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of this subsection and section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for temporary residence under this section, must establish to the Attorney General that the alien has performed 90 man-days of seasonal agricultural services—

(i) during the one-year period beginning on the date the alien obtained such status,

(ii) during the one-year period beginning one year after the date the alien obtained such status, and

(iii) during the one-year period beginning two years after the date the alien obtained such status.

(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 90 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(8).

(6) DISQUALIFICATION FROM CERTAIN PUBLIC ASSISTANCE.—The provisions of section 245A(h) (other than paragraph (1)(A)(iii)) shall apply to an alien who has obtained the status of an alien lawfully admitted for temporary residence under this section, during the five-year period beginning on the date the alien obtained such status, in the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

(e) DETERMINATION OF ADMISSIBILITY OF ADDITIONAL WORKERS.—In the determination of an alien's admissibility under subsection (c)(1)—

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(2) WAIVER OF CERTAIN GROUNDS FOR EXCLUSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(B) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under subparagraph (A):

(i) Paragraphs (9) and (10) (relating to criminals).

(ii) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(iii) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(iv) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(3) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

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(g) GENERAL DEFINITIONS.—In this section:

(1) The term "special agricultural worker" means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

(2) The term "seasonal agricultural services" has the meaning given such term in section 210(h).

(3) The term "Director" refers to the Director of the Bureau of the Census.

(4) The term "man-day" means, with respect to seasonal agricultural services, the performance during a calendar day of at least 4 hours of seasonal agricultural services.

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SEC. 212. [8 U.S.C. 1182]

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(d) * * *

(5)(A) The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

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GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. [8 U.S.C. 1251] (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or in violation of any other law of the United States;

* * * * * * *

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; or (B) is convicted of an aggravated felony at any time after entry;*

(5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, or has been convicted under section 266(c) of this title, or under section 36(c) of the Alien Registration Act, 1940, or has been convicted of violating or conspiracy to violate any provision of the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended, or has been convicted under section 1546 of title 18 of the United States Code;

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

(A) Aliens who are anarchists;

(B) Aliens who advocate or teach, or who are members of or affiliated with any organization that advocates or teaches, opposition to all organized government;

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*P.L. 100-690, §7344(a)(2), inserted "or" and subparagraph (B). As in original. No subparagraph (A).

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (v) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; or (vi) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt: *Provided*, That nothing in this paragraph, or in any other provision of this Act, shall be construed as declaring that the Communist Party does not advocate the overthrow of the Government of the United States by force, violence, or other unconstitutional means;

(D) Aliens not within any of the other provisions of this paragraph who advocate the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who are members of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under the authority of such organization or paid for by the funds of, or funds furnished by, such organization;

(E) Aliens not within any of the other provisions of this paragraph, who are members of or affiliated with any organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such aliens establish that they did not have knowledge or reason to believe at the time they became members of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist organization;

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;

(G) Aliens who write or publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating or teaching (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage; or (v) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship;

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G);

(7) is engaged, or at any time after entry has engaged, or at any time after entry has had a purpose to engage, in any of the activities described in paragraph (27) or (29) of section 212(a), unless the Attorney General is satisfied, in the case of any alien within category (C) of paragraph (29) of such section, that such alien did not have knowledge or reason to believe at the time such alien became a member of, affiliated with, or participated in the activities of the organization (and did not thereafter and prior to the date upon which such organization was registered or required to be registered under section 7 of the Subversive Activities Control Act

of 1950 have such knowledge or reason to believe) that such organization was a Communist organization;

* * * * * * *

[(10) Repealed.[7]]

(11) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(12) by reason of any conduct, behavior or activity at any time after entry became a member of any of the classes specified in paragraph (12) of section 212(a); or is or at any time after entry has been the manager, or is or at any time after entry has been connected with the management, of a house of prostitution or any other immoral place;

* * * * * * *

(14) at any time after entry, shall have been convicted of possessing or carrying in violation of any law any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, United States Code, or any revolver or[8] any weapon which shoots or is designed to shoot automatically or semiautomatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.[9]

(15) at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940;

(16) at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940; or

(17) the Attorney General finds to be an undesirable resident of the United States by reason of any of the following, to wit: has been or may hereafter be convicted of any violation or conspiracy to violate any of the following Acts or parts of Acts or any amendment thereto, the judgment on such conviction having become final, namely: an Act entitled "An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes", approved June 15, 1917, or the amendment thereof approved May 16, 1918; sections 791, 792, 793, 794, 2388, and 3241, title 18, United States Code; an Act entitled "An Act to prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes", approved October 6, 1917; an Act entitled "An Act to prevent in time of war departure from and entry into the United States contrary to the public safety", approved May 22, 1918; section 215 of this Act; an Act entitled "An Act to punish the willful injury or destruction of war material or of war premises or utilities used in connection with war material, and for other purposes", approved April 20, 1918; sections 2151, 2153, 2154, 2155, and 2156 of title 18, United States Code; an Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States", approved May 18, 1917, or any amendment thereof or supplement thereto; the Selective Training and Service Act of 1940; the Selective Service Act of 1948; the Universal Military Training and Service Act; an Act entitled "An Act to punish persons who make threats against the President of the United States", approved February 14, 1917; section 871 of title 18, United States Code; an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, or any amendment, thereof, known as[10] the Trading With the Enemy Act; section 6 of the Penal Code of the United States; section 2384 of title 18, United States Code; has been convicted of any offense against section 13 of the Penal Code of the United States committed during the period of August 1, 1914, to April 6, 1917, or of a conspiracy occurring within said period to commit an offense under said section 13 or of any offense committed during said period against the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in aid of a belligerent in the European war; section 960 of title 18, United States Code;

(18) has been convicted under section 278 of this Act or under section 4 of the Immigration Act of February 5, 1917;

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[7] P.L. 99-653, §7(c); 100 Stat. 3657.
[8] P.L. 100-690, §7348(a), inserted "any firearm or destructive device (as defined in paragraphs (3) and (4)), respectively, of section 921(a) of title 18, United States Code, or any revolver or".
[9] As in original. Period should possibly be a semicolon.
[10] P.L. 100-525, §9(m), struck out "thereof;" and substituted ", thereof, known as".

(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

(A) the Nazi government of Germany,

(B) any government in any area occupied by the military forces of the Nazi government of Germany,

(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion; or

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ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. [8 U.S.C. 1255a] (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) TIMELY APPLICATION.—

(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month[11] period or on the date of the issuance of such order, whichever day is later.

(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exhange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

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[11] P.L. 100-525, §2(h)(1)(A), struck out "18-month" and substituted "12-month".

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) CONTINUOUS RESIDENCE.—

(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) BASIC CITIZENSHIP SKILLS.—

(i) IN GENERAL.—The alien must demonstrate that he either—

(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) EXCEPTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED[12] INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled[13].

(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States

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[12]P.L. 100-525, §2(h)(1)(B)(i), inserted "OR DEVELOPMENTALLY DISABLED".
[13]P.L. 100-525, §2(h)(1)(B)(ii), inserted "or who is developmentally disabled".

after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).[14]

(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6) or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986[15],

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both; except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code[16].

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false,

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[14] P.L. 100-525, §2(h)(1)(C), amended this sentence in its entirety; however, no change was made to the existing sentence.

[15] P.L. 100-525, §2(h)(1)(D)(i), inserted "or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986".

[16] P.L. 100-525, §2(h)(1)(D)(ii), inserted "; except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code".

fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

(B) USE OF FEES.—The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence[17].

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

Subclause (II) (prohibiting the waiver of section 212(a)(15)) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).[18]

(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

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[17]P.L. 100-525, §2(h)(1)(E)(i), struck out "by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a)".

[18]P.L. 100-525, §2(h)(1)(E)(ii), added this sentence.

(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) IMPLEMENTATION OF SECTION.—

(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term "medical assistance" refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act.
(B) The Child Nutrition Act of 1966.
(C) The Vocational Education Act of 1963.
(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.
(E) The Headstart-Follow Through Act.
(F) The Job Training Partnership Act.
(G) Title IV of the Higher Education Act of 1965.
(H) The Public Health Service Act.
(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122[19]), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

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CENTRAL FILE; INFORMATION FROM OTHER DEPARTMENTS AND AGENCIES

SEC. 290. [8 U.S.C. 1360]

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(c) The Secretary of Health and Human Services[20] shall notify the Attorney General upon request whenever any alien is issued a social security account number and social security card. The Secretary[21] shall also furnish such available information as may be requested by the Attorney General regarding the identity and location of aliens in the United States.

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AUTHORIZATION FOR PROGRAMS FOR DOMESTIC RESETTLEMENT OF AND ASSISTANCE TO REFUGEES

SEC. 412. [8 U.S.C. 1522]

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(d) ASSISTANCE FOR REFUGEE CHILDREN.—* * *

(2)(A) The Director is authorized to provide assistance, reimbursement to States, and grants to and contracts with public and private nonprofit agencies, for the provision of child welfare services, including foster care maintenance payments and services and health care, furnished to any refugee child (except as provided in subparagraph (B)) during the thirty-six month period beginning with the first month in which such refugee child is in the United States.

(B)(i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age (or such higher age as the State's child welfare services plan under part B of title IV of the Social Security Act prescribes for the availability of such services to any other child in that State).

(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United

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[19]The Refugee Education Assistance Act of 1980 is Public Law 96-422.
[20]P.L. 100-525, §9(q), struck out "Federal Security Administrator" and substituted "Secretary of Health and Human Services".
[21]P.L. 100-525, §9(q), struck out "Administrator" and substituted "Secretary".

States. During any interim period while such a child is in the United States or in transit to the United States but before the child is so placed, the Director shall assume legal responsibility (including financial responsibility) for the child, if necessary, and is authorized to make necessary decisions to provide for the child's immediate care.

(iii) In carrying out the Director's responsibilities under clause (ii), the Director is authorized to enter into contracts with appropriate public or private nonprofit agencies under such conditions as the Director determines to be appropriate.

(iv) The Director shall prepare and maintain a list of (I) all such unaccompanied children who have entered the United States after April 1, 1975, (II) the names and last known residences of their parents (if living) at the time of arrival, and (III) the children's location, status, and progress.

(e) CASH ASSISTANCE AND MEDICAL ASSISTANCE TO REFUGEES.—(1) The Director is authorized to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee during the thirty-six month period beginning with the first month in which such refugee has entered the United States and for the identifiable and reasonable administrative costs of providing this assistance.

(2)(A) Cash assistance provided under this subsection to an employable refugee is conditioned, except for good cause shown—

(i) on the refugee's registration with an appropriate agency providing employment services described in subsection (c)(1)(A)(i), or, if there is no such agency available, with an appropriate State or local employment service;

(ii) on the refugee's participation in any available and appropriate social service or targeted assistance program (funded under subsection (c)) providing job or language training in the area in which the refugee resides; and

(iii) on the refugee's acceptance of appropriate offers of employment.

(B) Cash assistance shall not be made available to refugees who are full-time students in institutions of higher education (as defined by the Director after consultation with the Secretary of Education).

(C) In the case of a refugee who—

(i) refuses an offer of employment which has been determined to be appropriate either by the agency responsible for the initial resettlement of the refugee under subsection (b) or by the appropriate State or local employment service,

(ii) refuses to go to a job interview which has been arranged through such agency or service, or

(iii) refuses to participate in a social service or targeted assistance program referred to in subparagraph (A)(ii) which such agency or service determines to be available and appropriate,

cash assistance to the refugee shall be terminated (after opportunity for an administrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).

(3) The Director shall develop plans to provide English training and other appropriate services and training to refugees receiving cash assistance.

(4) If a refugee is eligible for aid or assistance under a State plan approved under part A of title IV or under title XIX of the Social Security Act, or for supplemental security income benefits (including State supplementary payments) under the program established under title XVI of that Act, funds authorized under this subsection shall only be used for the non-Federal share of such aid or assistance, or for such supplementary payments, with respect to cash and medical assistance provided with respect to such refugee under this paragraph.

(5) The Director is authorized to allow for the provision of medical assistance under paragraph (1) to any refugee, during the one-year period after entry, who does not qualify for assistance under a State plan approved under title XIX of the Social Security Act on account of any resources or income requirement of such plan, but only if the Director determines that—

(A) this will (i) encourage economic self-sufficiency, or (ii) avoid a significant burden on State and local governments; and

(B) the refugee meets such alternative financial resources and income requirements as the Director shall establish.

(6) As a condition for receiving assistance, reimbursement, or a contract under this subsection and notwithstanding any other provision of law, a State or agency must provide assurances that whenever a refugee applies for cash or medical assistance for which assistance or reimbursement is provided under this subsection, the State or agency must notify promptly the agency (or local affiliate) which provided for the initial resettlement of the refugee under subsection (b) of the fact that the refugee has so applied.

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers. The Secretary may permit alternative projects to cover specific groups of refugees who have been in the United States 36 months or longer if the Secretary determines that refugees in the group have been significantly and disproportionately dependent on welfare and need the services provided under the project in order to become self-sufficient and that their coverage under the projects would be cost-effective.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act.

* * * * * * *

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 414(a) of this Act, part A of title IV of the Social Security Act, or title XIX of such Act, may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

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[*Internal References.*—Social Security Act §§202(n); 203(a); 207(c); 208; 210; 210(a) and (f); 210A; 210A(d); 402(a) and (f); 415(f); 472(a); 1611(c); 1614(a); 1621(f); and 1926(a) cite the Immigration and Nationality Act.]

SELECTED PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954[1]

P.L. 83-591, APPROVED AUGUST 16, 1954 (68A STAT. 3)

TITLE 26, U.S. CODE

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[1]The Internal Revenue Code of 1954 has not been codified into positive law; section numbers in title 26, U.S. Code, correspond to sections in the Internal Revenue Code of 1954.

P.L. 99-514, §2(a), provides that the Internal Revenue Title enacted August 14, 1954, may be cited as the "Internal Revenue Code of 1986" and §2(b), provides, except when inappropriate, any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of the Internal Revenue Code of 1954.

[2]For provisions of Subtitle C and Subtitle A, Chapter 2, see Vol. I, p. 1091.

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Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

SECTION 1. TAX IMPOSED.

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(f) Adjustments in Tax Tables so That Inflation Will Not Result in Tax Increases.—

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(5) **Consumer price index.**—For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

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SEC. 21. EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term "applicable percentage" means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000.

(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND EMPLOYMENT-RELATED EXPENSES.—For purposes of this section—

(1) QUALIFYING INDIVIDUAL.—The term "qualifying individual" means—

(A) a dependent of the taxpayer who is under the age of 13[3] and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) EMPLOYMENT-RELATED EXPENSES.—

(A) IN GENERAL.—The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.[4]

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[3] P.L. 100-485, §703(a), struck out "15" and substituted "13".
[4] P.L. 100-203, §10101(a), added this sentence.

(B) EXCEPTION.—Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) DEPENDENT CARE CENTERS.—Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) DEPENDENT CARE CENTER DEFINED.—For purposes of this paragraph, the term "dependent care center" means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $2,400 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $4,800 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.[a]

(d) EARNED INCOME LIMITATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) SPECIAL RULE FOR SPOUSE WHO IS A STUDENT OR INCAPABLE OF CARING FOR HIMSELF.—In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $200 if subsection (c)(1) applies for the taxable year, or

(B) $400 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) SPECIAL RULES.—For purposes of this section—

(1) MAINTAINING HOUSEHOLD.—An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) MARITAL STATUS.—An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) CERTAIN MARRIED INDIVIDUALS LIVING APART.—If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

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[a] P.L. 100-485, §703(b), added this sentence.

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) SPECIAL DEPENDENCY TEST IN CASE OF DIVORCED PARENTS, ETC.—If—

(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13[6] or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) PAYMENTS TO RELATED INDIVIDUALS.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 151(c)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) STUDENT.—The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) EDUCATIONAL ORGANIZATION.—The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

(9) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO SERVICE PROVIDER.—No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.[7]

(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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SEC. 31. TAX WITHHELD ON WAGES.

* * * * * * *

(b) CREDIT FOR SPECIAL REFUNDS OF SOCIAL SECURITY TAX.—

(1) IN GENERAL.—The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) YEAR OF CREDIT.—Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

SEC. 32. EARNED INCOME.

(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 14 percent of so much of the earned income for the taxable year as does not exceed $5,714.

(b) LIMITATION.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) the maximum credit allowable under subsection (a) to any taxpayer, over

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[6] See footnote 3.

[7] P.L. 100-485, §703(c)(1), added paragraph (9).

(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting "$6,500" for "$9,000".

(c) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE INDIVIDUAL.—

(A) IN GENERAL.—The term "eligible individual" means an individual who, for the taxable year—

(i) is married (within the meaning of section 7703) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(c)(3)) or would be so entitled but for paragraph (2) or (4) of section 152(e),

(ii) is a surviving spouse (as determined under section 2(a)), or

(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) of paragraph (1) of such subsection).

(B) CHILD MUST RESIDE WITH TAXPAYER IN THE UNITED STATES.—An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual for more than one-half of the taxable year and such abode is in the United States. An individual shall be treated as satisfying clause (ii) or (iii) of subparagraph (A) only if the household in question is in the United States.

(C) INDIVIDUAL WHO CLAIMS BENEFITS OF SECTION 911 NOT ELIGIBLE INDIVIDUAL.—The term "eligible individual" does not include an individual who, for the taxable year, claims the benefits of section 911 (relating to citizens or residents of the United States living abroad).

(2) EARNED INCOME.—

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

(d) MARRIED INDIVIDUALS.—In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) AMOUNT OF CREDIT TO BE DETERMINED UNDER TABLES.—

(1) IN GENERAL.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) REQUIREMENTS FOR TABLES.—The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(g) COORDINATION WITH ADVANCE PAYMENTS OF EARNED INCOME CREDIT.—

(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(h) REDUCTION OF CREDIT TO TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX.—The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax[a]) with respect to such taxpayer for such taxable year.

(i) INFLATION ADJUSTMENTS.—

(1) IN GENERAL.—In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting "calendar year 1984" for "calendar year 1987" in subparagraph (B) thereof.

(2) DEFINITIONS, ETC.—For purposes of paragraph (1)—

(A) APPLICABLE CALENDAR YEAR.—The term "applicable calendar year" means—

(i) 1986 in the case of the dollar amounts referred to in clause (i) or (ii) of subparagraph (B), and

(ii) 1987 in the case of the dollar amount referred to in clause (iii) of subparagraph (B).

(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

(i) the $5,714 amount contained in subsection (a),

(ii) the $6,500 amount contained in the last sentence of subsection (b), and

(iii) the $9,000 amount contained in subsection (b)(2).

(3) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10).[b]

* * * * * * *

SEC. 59B. SUPPLEMENTAL MEDICARE PREMIUM.

(a) IMPOSITION OF PREMIUM.—In the case of an individual to whom this section applies, there is hereby imposed (in addition to any other amount imposed by this subtitle) for each taxable year a supplemental premium equal to the annual premium for such year determined under subsection (c).

(b) INDIVIDUALS SUBJECT TO PREMIUM.—This section shall apply to an individual for any taxable year if—

(1) such individual is a medicare-eligible individual for more than 6 full months beginning in the taxable year, and

(2) such individual's adjusted income tax liability for the taxable year equals or exceeds $150.

(c) DETERMINATION OF AMOUNT OF SUPPLEMENTAL PREMIUM.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the annual premium determined under this subsection with respect to any individual for any taxable year shall be equal to the product of—

(A) the supplemental premium rate determined under subsection (d) or (e) (whichever applies) for the taxable year, multiplied by

(B) the amount determined by dividing—

(i) the individual's adjusted income tax liability for the taxable year, by

(ii) $150.

(2) LIMITATION ON ANNUAL PREMIUM.—

(A) YEARS BEFORE 1994.—In the case of any taxable year beginning before 1994, the annual premium determined under this subsection with respect to any individual shall not exceed the limitation determined under the following table:

In the case of taxable years beginning in:	The limitation is:
1989	$800
1990	850
1991	900
1992	950
1993	1,050.

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[a] P.L. 100-647, §1007(g)(12), struck out "for taxpayers other than corporations".
[b] P.L. 100-647, §1001(c), amended paragraph (3) in its entirety.

(B) YEARS AFTER 1993.—In the case of any taxable year beginning in a calendar year after 1993, the annual premium determined under this subsection with respect to any individual shall not exceed—

(i) the limitation which would be in effect under this paragraph for taxable years beginning in the preceding calendar year without regard to the last sentence of this subparagraph, increased by

(ii) the percentage (if any) by which—

(I) the medicare-part B value for the 2nd preceding calendar year, exceeds

(II) such value for the 3rd preceding calendar year.

If the limitation determined under the preceding sentence is not a multiple of $50, such limitation shall be rounded to the nearest multiple of $50.

(C) MEDICARE-PART B VALUE.—

(i) IN GENERAL.—For purposes of subparagraph (B), the term "medicare-part B value" means, with respect to any calendar year, an amount equal to the excess of—

(I) the average per capita part B outlays for the year, over

(II) 12 times the monthly premium for months in such calendar year established under section 1839 of such Act (without regard to subsections (b), (f), (g)(4), and (g)(5) thereof).

(ii) AVERAGE PER CAPITA PART B OUTLAYS.—For purposes of clause (i), the term "average per capita part B outlays" means, with respect to a calendar year—

(I) the outlays under part B of title XVIII of the Social Security Act for the year, divided by

(II) the average number of individuals covered under such part during the year.

(iii) SPECIAL RULE FOR COVERED OUTPATIENT DRUGS.—In applying the limitation under subparagraph (B) with respect to taxable years beginning in any calendar year before 1998, for purposes of this subparagraph—

(I) the term "outlays" does not include outlays for covered outpatient drugs (as defined in section 1861(t)(2) of the Social Security Act), and

(II) the monthly premium shall be computed under clause (i)(II) excluding premiums under section 1839(g) of such Act attributable to the prescription drug monthly premium.

(3) TABLES.—The annual premium shall be determined under tables which shall be prescribed by the Secretary. Such tables shall be based on the foregoing provisions of this subsection; except that such tables may have adjusted income tax liability brackets of less than $150.

(d) DETERMINATION OF SUPPLEMENTAL PREMIUM RATE FOR YEARS BEFORE 1994.—In the case of any taxable year beginning before 1994, the supplemental premium rate determined under this subsection shall be the sum of the catastrophic coverage premium rate and the prescription drug premium rate determined under the following table:

In the case of any taxable year beginning in:	The catastrophic coverage premium rate is:	The prescription drug premium rate is:
1989	$22.50	0
1990	27.14	$10.36
1991	30.17	8.83
1992	30.55	9.95
1993	29.55	12.45.

(e) SUPPLEMENTAL PREMIUM RATE FOR YEARS AFTER 1993.—

(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1993, except as provided in paragraph (2), the supplemental premium rate determined under this subsection shall be the sum of—

(A) the catastrophic coverage premium rate (which would be in effect under this section for taxable years beginning in the preceding calendar year if paragraph (2) did not apply to any preceding calendar year) adjusted by the percentage determined under paragraph (3) for the calendar year in which the taxable year begins, and

(B) the prescription drug premium rate (which would be in effect under this section for taxable years beginning in the preceding calendar year if paragraph (2) did not apply to any preceding calendar year) adjusted by the percentage determined under paragraph (4) for the calendar year in which the taxable year begins.

(2) SUPPLEMENTAL PREMIUM RATE CANNOT GO DOWN, AND CANNOT GO UP BY MORE THAN $1.50.—

(A) IN GENERAL.—In no event shall the supplemental premium rate determined under this subsection for any taxable year beginning in a calendar year after 1993—

(i) be less than, or

(ii) exceed by more than $1.50,

the supplemental premium rate in effect under this section for taxable years beginning in the preceding calendar year.

(B) DETERMINATION OF COMPONENT RATES WHERE SUBPARAGRAPH (A) APPLIES.—If subparagraph (A) affects the supplemental premium rate determined under this subsection for taxable years beginning in any calendar year, the supplemental premium rate determined after the application of subparagraph (A) shall be allocated between the catastrophic coverage premium rate and the prescription drug premium rate on the basis of the respective amounts of such rates without regard to the application of subparagraph (A).

(3) PERCENTAGE ADJUSTMENT FOR CATASTROPHIC COVERAGE PREMIUM RATE.—

(A) IN GENERAL.—The percentage determined under this paragraph for any calendar year shall be the sum of—

(i) the outlay-premium percentage, and

(ii) the reserve account percentage.

For purposes of the preceding sentence, negative percentages shall be taken into account as negatives.

(B) OUTLAY-PREMIUM PERCENTAGE.—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the outlay-premium percentage for any calendar year is—

(I) the percentage by which the per capita catastrophic outlays in the 2nd preceding calendar year exceed such outlays in the 3rd preceding calendar year, reduced (including below zero) by

(II) the percentage by which the per capita catastrophic coverage premium liability for the 2nd preceding calendar year exceeds such liability for the 3rd preceding calendar year (determined as if the catastrophic coverage premium rate for the 2nd preceding calendar year were the same as the rate in effect for the 3rd preceding calendar year).

If there is no excess described in subclause (I) or (II), such subclause shall be applied by substituting "is less than" for "exceeds" and the percentage determined with such substitution shall be taken into account as a negative percentage.

(ii) ADJUSTMENT FOR MORE RECENT INCREASES IN COST-OF-LIVING.—If—

(I) the percentage increase in the CPI for the 12-month period ending with May of the preceding calendar year, exceeds (or is less than)

(II) such increase for the 12-month period ending with May of the 2nd preceding calendar year,

by at least 1 percentage point, the percentage determined under clause (i) for the calendar year shall be adjusted up (or down, respectively) by 1/2 of the amount by which such excess (or shortage, respectively) exceeds 1 percent.

(C) RESERVE ACCOUNT PERCENTAGE.—

(i) IN GENERAL.—The reserve account percentage for any calendar year is the percentage which the rate change determined under clause (ii) is of the catastrophic coverage premium rate which would be in effect under this section for taxable years beginning in the preceding calendar year if paragraph (2) did not apply to any preceding calendar year. If there is an excess determined under clause (iii), the percentage determined under the preceding sentence shall be taken into account as a negative percentage.

(ii) DETERMINATION OF RATE CHANGE.—The rate change determined under this clause for any calendar year is the adjustment in the catastrophic coverage premium rate (otherwise in effect for taxable years beginning in the 2nd preceding calendar year) which the Secretary determines would have resulted in an aggregate increase (or decrease) in the premiums imposed by this section for such taxable years equal to 63 percent of the shortfall or excess determined under clause (iii) for the calendar year.

(iii) DETERMINATION OF SHORTFALL OR EXCESS.—The shortfall (or excess) determined under this clause for any calendar year is the amount by which—

(I) 20 percent of the outlays during the 2nd preceding calendar year from the Medicare Catastrophic Coverage Account created under section 1841B of the Social Security Act, exceeds (or is less than)

(II) the balance in such Account as of the close of such 2nd preceding calendar year (determined by taking into account previous premium increases by reason of the reserve account percentage under this subsection or by reason of section 1839(g)(2) of the Social Security Act but not credited to the Account).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) PER CAPITA CATASTROPHIC OUTLAYS.—The term "per capita catastrophic outlays" means, with respect to any calendar year, the amount (as determined by the Secretary of Health and Human Services) equal to—

(I) the outlays during such year from the Medicare Catastrophic Coverage Account created under section 1841B of the Social Security Act, divided by

(II) the average number of individuals entitled to receive benefits under part A of title XVIII of the Social Security Act during such calendar year.

(ii) PER CAPITA CATASTROPHIC COVERAGE PREMIUM LIABILITY.—The term "per capita catastrophic coverage premium liability" means, with respect to any calendar year, the amount (as determined by the Secretary) equal to—

(I) the aggregate premiums imposed by this section for taxable years beginning in such calendar year to the extent attributable to the catastrophic coverage premium rate, divided by

(II) the number of individuals who had premium liability under this section for such taxable years.

(iii) PERCENTAGE INCREASE IN CPI.—The percentage increase in the CPI for any 12-month period shall be the percentage by which the Consumer Price Index (as defined in section 1(f)(5)) for the last month of such period exceeds such Index for the last month of the preceding 12-month period.

(4) PERCENTAGE ADJUSTMENT FOR PRESCRIPTION DRUG PREMIUM RATE.—The percentage determined under this paragraph for any calendar year shall be determined under rules similar to the rules of paragraph (3); except that—

(A) in determining the prescription drug premium rate for any calendar year before 1998, the following percentages shall be substituted for 20 percent in paragraph (3)(C)(iii)(I):

In the case of calendar year:	The percentage is:
1994	75
1995	50
1996	25
1997	25,

(B) no adjustment by reason of the outlay-premium percentage shall be made for any calendar year before 1998,

(C) any reference to the Medicare Catastrophic Coverage Account shall be treated as a reference to the Federal Catastrophic Drug Insurance Trust Fund, and

(D) any reference to the catastrophic coverage premium rate shall be treated as a reference to the prescription drug premium rate.

(f) DEFINITIONS AND SPECIAL RULES.—

(1) MEDICARE-ELIGIBLE INDIVIDUAL.—For purposes of this section—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term "medicare-eligible individual" means, with respect to any month, any individual who is entitled to (or, on application without the payment of an additional premium, would be entitled to) benefits under part A of title XVIII of the Social Security Act for such month.

(B) EXCEPTIONS.—The term "medicare-eligible individual" shall not include for any month—

(i) any individual who is entitled to benefits under part A of title XVIII of the Social Security Act for such month solely by reason of the payment of a premium under section 1818 of such Act, or

(ii) any qualified nonresident.

(2) SPECIAL RULES FOR JOINT RETURNS.—In the case of a joint return—

(A) WHERE PREMIUM APPLIES TO BOTH SPOUSES.—If both spouses meet the requirements of subsection (b)(1) for the taxable year—

(i) such spouses shall be treated as 1 individual for purposes of applying this section, except that

(ii) the limitation of subsection (c)(2) shall be twice the amount which would otherwise apply.

(B) WHERE PREMIUM APPLIES TO ONLY 1 SPOUSE.—If only 1 spouse meets the requirements of subsection (b)(1) for the taxable year—

(i) this section shall be applied separately with respect to such spouse, and

(ii) the adjusted income tax liability of such spouse shall be determined under paragraph (4)—

(I) by taking into account one-half of the income tax liability determined with respect to the joint return, and

(II) by taking into account under clause (ii) of paragraph (4)(C) only amounts attributable to such spouse.

(3) SEPARATE RETURNS BY MARRIED INDIVIDUALS.—If an individual is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for the taxable year and such individual does not live apart from his spouse at all times during the taxable year—

(A) the limitation of subsection (c)(2) shall be twice the amount which would otherwise apply if both the individual and the spouse of the individual meet the requirements of subsection (b)(1) with respect to the calendar year in which the taxable year begins (determined without regard to subparagraph (B) of this paragraph),

(B) if such individual does not otherwise meet the requirements of subsection (b)(1), such individual shall be treated as meeting the requirements of subsection (b)(1) for the taxable year if the spouse of such individual meets such requirements with respect to the calendar year in which the taxable year begins, and

(C) in applying subparagraph (C) of paragraph (4)—

(i) the dollar limitation of clause (i) thereof shall be 1/2 of the amount which applies to a joint return where both spouses meet the requirements of subsection (b)(1), and

(ii) the individual shall be deemed to receive social security benefits during the taxable year in an amount not less than 1/2 of the aggregate social security benefits received by such individual and his spouse during the taxable year.

(4) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section—

(A) IN GENERAL.—The term "adjusted income tax liability" means an amount equal to the income tax liability, reduced by the excess (if any) of—

(i) 15 percent of the governmental retiree exclusion amount (if any) determined under subparagraph (C) for the taxable year, over

(ii) the amount of the credit allowable under section 22 for the taxable year.

(B) INCOME TAX LIABILITY.—The term "income tax liability" means—

(i) the tax imposed by this chapter (determined without regard to this section), reduced by

(ii) the credits allowed under part IV of this subchapter (other than under sections 31, 33, and 34).

(C) GOVERNMENTAL RETIREE EXCLUSION AMOUNT.—The governmental retiree exclusion amount for any taxable year is the lesser of—

(i) $6,000 ($9,000 in the case of a joint return where both spouses meet the requirements of subsection (b)(1) for the taxable year), or

(ii) the amount which is received as an annuity (whether for a period certain or during 1 or more lives) under a governmental plan (as defined in the 1st sentence of section 414(d)) and which is includible in gross income under section 72 for the taxable year.

The amount determined under the preceding sentence shall be reduced by the social security benefits (as defined in section 86(d)) received during the taxable year.

(D) INDEXING.—In the case of any taxable year beginning in a calendar year after 1989, subparagraph (C)(i) shall be applied by substituting for each dollar amount contained in such subparagraph an amount equal to—

(i) the dollar amount which would be in effect under subparagraph (C)(i) for taxable years beginning in the preceding calendar year without regard to the last sentence of this subparagraph, increased by

(ii) the cost-of-living adjustment determined under section 215(i) of the Social Security Act for the calendar year in which the taxable year begins.

Any amount determined under the preceding sentence shall be rounded to the nearest multiple of $50.

(5) QUALIFIED NONRESIDENT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "qualified nonresident" means, with respect to any month during the taxable year, any individual if—

(i) such individual is not furnished during such taxable year or any of the 4 preceding taxable years any service for which a claim for payment is made under part A of title XVIII of the Social Security Act,

(ii) such individual is not entitled to benefits under part B of title XVIII of the Social Security Act at any time during such taxable year or any of the 4 preceding taxable years, and

(iii) such individual is present in a foreign country or countries for at least 330 full days during—

(I) the 12-month period ending at the close of the taxable year, and

(II) each of the 4 consecutive preceding 12-month periods.

(B) SPECIAL RULE FOR INDIVIDUALS WHO DIE DURING THE TAXABLE YEAR.—An individual who dies during the taxable year shall be treated as meeting the requirement of subparagraph (A)(iii)(I) if such individual is present in a foreign country or countries for at least a number of full days equal to 90 percent of the days during such taxable year before the date of death.

(6) COORDINATION WITH OTHER PROVISIONS.—

(A) NOT TREATED AS MEDICAL EXPENSE.—For purposes of section 213, the supplemental premium imposed by this section for any taxable year shall not be treated as an expense paid for medical care.

(B) NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The supplemental premium imposed by this section shall not be treated as a tax imposed by this chapter for purposes of determining—

(i) the amount of any credit allowable under this chapter, or

(ii) the amount of the minimum tax imposed by section 55.

(C) TREATED AS TAX FOR SUBTITLE F.—For purposes of subtitle F, the supplemental premium imposed by this section shall be treated as if it were a tax imposed by section 1.

(D) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the supplemental premium imposed by this section.

(7) SECTION NOT TO AFFECT LIABILITY TO POSSESSIONS, ETC.—This section shall not apply for purposes of determining liability to any possession of the United States. For purposes of sections 932 and 7654, the supplemental premium imposed by this section shall not be treated as a tax imposed by this chapter.

(8) SHORT TAXABLE YEARS.—In the case of a taxable year of less than 12 months, this section shall be applied under regulations prescribed by the Secretary.

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SEC. 61. GROSS INCOME DEFINED.

(a) GENERAL DEFINITION.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

(b) CROSS REFERENCES.—

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

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SEC. 74. PRIZES AND AWARDS.

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(c) EXCEPTION FOR CERTAIN EMPLOYEE ACHIEVEMENT AWARDS.—

(1) IN GENERAL.—Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) EXCESS DEDUCTION AWARD.—If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) TREATMENT OF TAX-EXEMPT EMPLOYERS.—In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) CROSS REFERENCE.—

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

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SEC. 86. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) IN GENERAL.—Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(1) one-half of the social security benefits received during the taxable year, or

(2) one-half of the excess described in subsection (b)(1).

(b) TAXPAYERS TO WHOM SUBSECTION (a) APPLIES.—

(1) IN GENERAL.—A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term "modified adjusted gross income" means adusted[10] gross income—

(A) determined without regard to this section and sections 135,[11] 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) BASE AMOUNT.—For purposes of this section, the term "base amount" means—

(1) except as otherwise provided in this subsection, $25,000,

(2) $32,000, in the case of a joint return, and

(3) zero, in the case of a taxpayer who—

(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(B) does not live apart from his spouse at all times during the taxable year.

(d) SOCIAL SECURITY BENEFIT.—

(1) IN GENERAL.—For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.

(2) ADJUSTMENT FOR REPAYMENTS DURING YEAR.—

(A) IN GENERAL.—For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit

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[10] As in original. Should be "adjusted".
[11] P.L. 100-647, §6009(c)(1), inserted "135,".

previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) DENIAL OF DEDUCTION.—If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) WORKMEN'S COMPENSATION BENEFITS SUBSTITUTED FOR SOCIAL SECURITY BENEFITS.—For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) TIER 1 RAILROAD RETIREMENT BENEFIT.—For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term "employment" as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.—For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) LIMITATION ON AMOUNT INCLUDED WHERE TAXPAYER RECEIVES LUMP-SUM PAYMENT.—

(1) LIMITATION.—If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) SPECIAL RULES.—

(A) YEAR TO WHICH BENEFIT ATTRIBUTABLE.—For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) ELECTION.—An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) TREATMENT AS PENSION OR ANNUITY FOR CERTAIN PURPOSES.—For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and[12]

(4)[13] section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

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SEC. 89. BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.

(a) BENEFITS UNDER DISCRIMINATORY PLANS.—

(1) IN GENERAL.—Notwithstanding any provision of part III of this subchapter, gross income of a highly compensated employee who is a participant in a

[12]P.L. 100-647, §1001(e), inserted "and".
[13]P.L. 100-647, §1001(e), struck out paragraph (4) and redesignated paragraph (5) as paragraph (4).

discriminatory employee benefit plan during any testing[14] year shall include an amount equal to such employee's excess benefit under such plan for such testing[15] year.

(2) YEAR OF INCLUSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B)—

(i) any amount included in gross income under paragraph (1) shall be taken into account for the taxable year of the employee with or within which the testing[16] year ends, and

(ii) any deduction of the employer attributable to such amount shall be allowable for the taxable year of the employer with or within which the testing[17] year ends.

(B) ELECTION TO DELAY INCLUSION FOR 1 YEAR.—If an employer maintaining a plan with a testing[18] year ending after September 30 and on or before December 31 of a calendar year elects the application of this subparagraph—

(i) amounts included in gross income under paragraph (1) with respect to employees of such employer shall be taken into account for the taxable year of the employee following the taxable year determined under subparagraph (A), but

(ii) any deduction of the employer which is attributable to such amounts shall be allowable for the taxable year with or within which the testing[19] year following the testing[20] year in which the excess benefits occurred ends.[21]

(b) EXCESS BENEFIT.—For purposes of this section—

(1) IN GENERAL.—The excess benefit of any highly compensated employee is the excess of such employee's employer-provided benefit under the plan over the highest permitted benefit.

(2) HIGHEST PERMITTED BENEFIT.—For purposes of paragraph (1), the highest permitted benefit under any plan shall be determined by reducing the nontaxable benefits of highly compensated employees (beginning with the employees with the greatest nontaxable benefits) until such plan would not be treated as a discriminatory employee benefit plan if such reduced benefits were taken into account.

(3) PLANS OF SAME TYPE.—In computing the excess benefit with respect to any benefit, there shall be taken into account all plans of the employer of the same type.

(4) NONTAXABLE BENEFITS.—For purposes of this subsection, the term "nontaxable benefit" means any benefit provided under a plan to which this section applies which (without regard to subsection (a)(1)) is excludable from gross income under this chapter. Such term includes any group-term life insurance the cost of which is includible in gross income under section 79.[22]

(c) DISCRIMINATORY EMPLOYEE BENEFIT PLAN.—For purposes of this section, the term "discriminatory employee benefit plan" means any statutory employee benefit plan unless such plan meets the—

(1) eligibility requirements of subsection (d), and

(2) benefit requirements of subsection (e).

(d) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—A plan meets the eligibility requirements of this subsection for any testing[23] year if—

(A) at least 90 percent of all employees who are not highly compensated employees—

(i) are eligible to participate in such plan (or in any other plan of the employer of the same type), and

(ii) would (if they participated) have available under such plans an employer-provided benefit which is at least 50 percent of the largest employer-provided benefit available under all such plans of the employer to any highly compensated employee,

(B) at least 50 percent of the employees eligible to participate in such plan are not highly compensated employees, and

(C) such plan does not contain any provision relating to eligibility to participate which (by its terms or otherwise) discriminates in favor of highly compensated employees.

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[14] P.L. 100-647, §3021(a)(1)(A), struck out "plan" and substituted "testing".
[15] See footnote 14.
[16] See footnote 14.
[17] See footnote 14.
[18] See footnote 14.
[19] See footnote 14.
[20] See footnote 14.
[21] P.L. 100-647, §1011B(a)(1), amended paragraph (2) in its entirety.
[22] P.L. 100-647, §1011B(a)(2), added this sentence.
[23] See footnote 14.

(2) ALTERNATIVE ELIGIBILITY PERCENTAGE TEST.—A plan shall be treated as meeting the requirements of paragraph (1)(B) if—

(A) the percentage determined by dividing the number of highly compensated employees eligible to participate in the plan by the total number of highly compensated employees, does not exceed

(B) the percentage similarly determined with respect to employees who are not highly compensated employees.

(e) BENEFIT REQUIREMENTS.—

(1) IN GENERAL.—A plan meets the benefit requirements of this subsection for any testing[24] year if the average employer-provided benefit received by employees other than highly compensated employees under all plans of the employer of the same type is at least 75 percent of the average employer-provided benefit received by highly compensated employees under all plans of the employer of the same type.

(2) AVERAGE EMPLOYER-PROVIDED BENEFIT.—For purposes of this subsection, the term "average employer-provided benefit" means, with respect to highly compensated employees, an amount equal to—

(A) the aggregate employer-provided benefits received by highly compensated employees under all plans of the type being tested, divided by

(B) the number of highly compensated employees (whether or not covered under such plans).

The average employer-provided benefit with respect to employees other than highly compensated employees shall be determined in the same manner as the average employer-provided benefit for highly compensated employees.

(f) SPECIAL RULE WHERE HEALTH OR GROUP-TERM PLAN MEETS 80-PERCENT COVERAGE TEST.—If at least 80 percent of the employees who are not highly compensated employees are covered under a health plan or group-term life insurance plan during the testing[25] year, such plan shall be treated as meeting the requirements of subsections (d) and (e) for such year. The preceding sentence shall not apply if the plan does not meet the requirements of subsection (d)(1)(C) (relating to nondiscriminatory provisions).

(g) OPERATING RULES.—

(1) AGGREGATION OF COMPARABLE HEALTH PLANS.—In the case of health plans maintained by an employer—

(A) IN GENERAL.—An employer may treat a group of comparable plans as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2) and (f).

(B) COMPARABLE PLANS.—For purposes of subparagraph (A), a group of comparable plans is any group (selected by the employer) of plans of the same type if the smallest employer-provided benefit available to any participant in any such plan is at least 95 percent of the largest employer-provided benefit available to any participant in any such plan.

(C) EMPLOYEES COVERED BY MORE THAN 1 PLAN.—The Secretary may provide that 2 or more plans providing benefits to the same participant shall be treated as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2), and (f).[26]

(D) SPECIAL RULES FOR APPLYING SUBSECTION (f).—

(i) IN GENERAL.—For purposes of applying subsection (f)—

(I) except as provided in clause (ii), subparagraph (B) shall be applied by substituting "90 percent" for "95 percent", and

(II) a group of plans of the same type shall be treated as comparable plans if the requirements of subparagraph (E) are met.

(ii) ELECTION TO USE LOWER PERCENTAGE IN DETERMINING COMPARABILITY.—If an election by the employer under this clause applies for the testing year—

(I) subclause (I) of clause (i) shall not apply,

(II) for purposes of applying subsection (f), subparagraph (B) of this paragraph shall be applied by substituting "80 percent" for "95 percent", and

(III) subsection (f) shall be applied with respect to all health plans maintained by the employer by substituting "90 percent" for "80 percent".[27]

(E) PLANS TREATED AS COMPARABLE IF EMPLOYEE COST DIFFERENCE IS $100 OR LESS.—

(i) IN GENERAL.—A group of plans of the same type shall be treated as comparable with respect to a group of employees if—

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[24] See footnote 14.
[25] See footnote 14.
[26] P.L. 100-647, §1011B(a)(3), added subparagraph (C).
[27] P.L. 100-647, §3021(a)(6), added subparagraph (D).

(I) such plans are available to all employees in the group on the same terms, and

(II) the difference in annual cost to employees between the plans with the lowest and highest annual employee cost is not greater than $100.

(ii) COORDINATION WITH SUBPARAGRAPH (B).—A plan not in the group of plans described in clause (i) shall be treated as part of such group if, under subparagraph (B) (without regard to clause (iii) of this subparagraph), such plan is comparable to the plan in such group with the largest employer-provided benefit.

(iii) OTHER PLANS PROVIDING COMPARABLE BENEFITS.—A plan not in the group of plans described in clause (i) shall be treated as part of such group with respect to an employee if—

(I) in the case of an employee who is not a highly compensated employee, such employee is eligible to participate in the plan in such group with the largest employer-provided benefit (without regard to clause (ii)),

(II) in the case of an employee who is not a highly compensated employee, the annual cost to such employee under such plan is not lower than the lowest cost permitted within such group, and

(III) the employer-provided benefit under such plan is less than the employer-provided benefit under the plan in such group with the largest such benefit (without regard to clause (ii)).

(iv) SEPARATE APPLICATION OF REQUIREMENTS.—If an employer elects the application of paragraph (2)(A)(ii), the amount under clause (i) shall be allocated among plans covering spouses and dependents and plans covering employees in such manner as the employer specifies.

(v) COST-OF-LIVING ADJUSTMENT.—In the case of testing years beginning after 1989, the $100 amount under clause (i) shall be increased by the percentage (if any) by which—

(I) the CPI for the calendar year preceding the year in which the testing year begins, exceeds

(II) the CPI for 1988.

For purposes of this clause, the CPI for any calendar year shall be determined under section 1(f).[28]

(2) SPECIAL RULES FOR APPLYING BENEFIT REQUIREMENTS TO HEALTH PLANS.—

(A) ELECTION.—For purposes of determining whether the requirements of subsection (e) or (f)[29] are met with respect to health plans, the employer may elect—

(i) to disregard any employee if such employee and his spouse and dependents (if any) are covered by a health plan providing core benefits maintained by another employer, and

(ii) to apply subsection (e) or (f)[30] separately with respect to coverage of spouses or dependents by such plans and to take into account with respect to such coverage only employees with a spouse or dependents who are not covered by a health plan providing core benefits maintained by another employer.

The provisions of the preceding sentence shall not apply for purposes of applying subsection (f) unless the requirements of subsection (f) would be met if such subsection were applied without regard to the preceding sentence and on the basis of eligibility to participate rather than coverage.[31]

(B) SWORN STATEMENTS.—Any employer who elects the application of subparagraph (A) shall obtain and maintain, in such manner as the Secretary may prescribe, adequate sworn statements to demonstrate whether individuals have—

(i) a spouse or dependents,[32]

(ii) core health benefits under a plan of another employer, and[33]

(iii) the health coverage (if any) received by the employee from the employer.[34]

The Secretary shall provide a method for meeting the requirements of this subparagraph through the use of valid sampling techniques. No statement

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[28] P.L. 100-647, §3021(a)(6), added subparagraph (E).
[29] P.L. 100-647, §3021(a)(7)(A)(i), inserted "or (f)".
[30] See footnote 29.
[31] P.L. 100-647, §3021(a)(7)(A)(ii), added this sentence.
[32] P.L. 100-647, §3021(a)(8)(B), struck out "and".
[33] P.L. 100-647, §3021(a)(8)(B), struck out the period and substituted ", and".
[34] P.L. 100-647, §3021(a)(8)(B), added clause (iii).

shall be required under clause (ii) with respect to any individual eligible for coverage at no cost under a health plan which provides core health benefits and with respect to whom the employee does not elect any core health coverage from the employer.[35]

(C) PRESUMPTION WHERE NO STATEMENT.—In the absence of a statement described in subparagraph (B)—

(i) an employee who is not a highly compensated employee shall be treated—

(I) as not covered by another plan of another employer providing core benefits, and

(II) as having a spouse and dependents not covered by another plan of another employer providing core benefits, and

(ii) a highly compensated employee shall be treated—

(I) as covered by another plan of another employer providing core benefits, and

(II) as not having a spouse or dependents.

(D) CERTAIN INDIVIDUALS MAY NOT BE DISREGARDED.—In the case of a highly compensated employee who receives employer-provided benefits under all health plans of the employer which are more than 133 1/3 percent of the average employer-provided benefit under such plans[36] for employees other than highly compensated employees, the employer may not disregard such employee, or his spouse or dependents for purposes of clause (i) or (ii) of subparagraph (A). The Secretary shall make such adjustments as are necessary in applying the rules of the preceding sentence to subsection (f).[37]

(E) SPECIAL RULE.—No employee who is not a highly compensated employee may be disregarded under subparagraph (A)(i) with respect to any health plan of the employer unless under such plan such employee is entitled, when the coverage under the other health plan referred to in subparagraph (A)(i) ceases, to elect coverage under the plan of the employer (whether or not an election is otherwise available). Such election is to be on the same terms as if such employee was making such election during a subsequent open season. Rules similar to the rules of the preceding sentences of this subparagraph shall apply in the case of an employee treated as not having a spouse or dependents or having a spouse or dependents covered by a health plan of another employer providing core benefits.[38]

(3) EMPLOYER-PROVIDED BENEFIT.—For purposes of this section—

(A) IN GENERAL.—Except as provided in subsection (k), an employee's employer-provided benefit under any statutory employee benefit plan is—

(i) in the case of any health or group-term life insurance plan, the value of the coverage, or

(ii) in the case of any other plan, the value of the benefits,

provided during the testing[39] year to or on behalf of such employee to the extent attributable to contributions made by the employer.

(B) SPECIAL RULE FOR HEALTH PLANS.—The value of the coverage provided by any health plan shall be determined under procedures prescribed by the Secretary which shall—

(i) set forth the values of various standard types of coverage involving a representative group, and

(ii) provide for adjustments to take into account the specific coverage and group involved.

(C) SPECIAL RULE FOR GROUP-TERM LIFE PLANS.—

(i) IN GENERAL.—Except as provided in clause (ii), in determining the value of coverage under a group-term life insurance plan, the amount taken into account for any employee shall be based on the cost of the insurance determined under section 79(c) for an employee who is age 40.

(ii) EXCESS BENEFIT.—For purposes of subsection (b), the excess benefit with respect to coverage under a group-term life insurance plan shall be equal to the greater of—

(I) the cost of such excess benefit (expressed as dollars of coverage) determined without regard to section 79(c), or

(II) such cost determined with regard to section 79(c).

(D) SALARY REDUCTIONS.—

(i) IN GENERAL.—Except for purposes of subsections (d)(1)(A)(ii) and (j)(5), any salary reduction shall be treated as an employer-provided benefit.

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[35] P.L. 100-647, §1011B(a)(4), added this sentence.
[36] P.L. 100-647, §1011B(a)(5), struck out "plan" and substituted "plans".
[37] P.L. 100-647, §3021(a)(7)(B), added this sentence.
[38] P.L. 100-647, §3021(a)(8)(A), added subparagraph (E).
[39] See footnote 14.

(ii) SPECIAL RULE FOR SUBSECTION (d)(1)(a)[40](ii).—Notwithstanding clause (i), any salary reduction under a cafeteria plan (within the meaning of section 125) shall[41] treated as an employer-provided benefit for purposes of subsection (d)(1)(A)(ii) if—

(I) the percentage of employees who are not highly compensated employees eligible to participate in the plan is not greater than the percentage of highly compensated employees so eligible,

(II) all employees eligible to participate in the plan are eligible under the same terms and conditions, and

(III) no highly compensated employee eligible under the plan is eligible to participate in any other plan maintained by the employer for any benefit of the same type unless the benefit is available on the same terms and conditions to every employee who is not a highly compensated employee eligible to participate in the plan.

(iii) REGULATIONS.—Notwithstanding clause (i) or (ii), the Secretary may by regulations provide that any salary reduction shall or shall not be treated as an employer-provided benefit to prevent avoidance of the purposes of this section.[42]

(E) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—

(i) IN GENERAL.—Except as provided in regulations and clause (ii), an employer may treat the contribution such employer makes to a multiemployer plan on behalf of an employee as the employer-provided benefit of such employee under such plan.

(ii) ADJUSTMENT.—If—

(I) the allocation of plan benefits between highly compensated employees and other employees under a multiemployer plan (or within either of such groups) varies materially from the allocation of employer contributions to such plan, or

(II) the employer contributions relate to benefits of different types,

the employer-provided benefit determined under clause (i) shall be appropriately adjusted to take into account such material variation or such employer contribution.

(iii) EXCEPTION FOR PROFESSIONALS.—This subparagraph shall not apply to any employer maintaining a multiemployer plan if such employer makes contributions to such plan on behalf of any individual performing services in the field of health, law, engineering, architecture, accounting, actuarial science, financial services, or consulting or in such other field as the Secretary may prescribe.[43]

(4) ELECTION TO TEST PLANS OF DIFFERENT TYPES TOGETHER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the employer may elect to treat all plans of the types specified in such election as plans of the same type for purposes of applying subsection (e).

(B) EXCEPTION FOR HEALTH PLANS.—Subparagraph (A) shall not apply for purposes of determining whether any health plan meets the requirements of subsection (e); except that benefits provided under health plans which meet such requirements may be taken into account in determining whether plans of other types meet the requirements of subsection (e).

(5) SEPARATE LINE OF BUSINESS EXCEPTION.—If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the preceding provisions of this section separately with respect to employees in each such separate line of business. The preceding sentence shall not apply to any plan unless such plan is available to a group of employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees. In applying section 414(r)(7) for purposes of this section, an operating unit shall be treated as in a separate geographic area from another unit if such units are at least 35 miles apart.[44]

(6) TIME FOR TESTING.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the determination of whether any plan is a discriminatory employee benefit plan for any testing year shall be made on the basis of the facts as of the testing day.

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[40]As in original. Should be "(A)".
[41]As in original. Possibly should read "shall be".
[42]P.L. 100-647, §3021(a)(11), amended subparagraph (D) in its entirety.
[43]P.L. 100-647, §3021(a)(4), added subparagraph (E).
[44]P.L. 100-647, §3021(b)(2)(B), added this sentence.

(B) ADJUSTMENT WHERE BENEFIT OF HIGHLY COMPENSATED EMPLOYEE CHANGES.—If the employer-provided benefit (actually provided or made available) of a highly compensated employee changes during the testing year by reason of any change in the terms of the plan or the making of an election by such employee, the amount taken into account as such employee's employer-provided benefit shall be adjusted to take into account such change and the portion of the testing year during which the changed benefit is provided (or made available).

(C) TREATMENT OF NON-HIGHLY COMPENSATED EMPLOYEES WHERE CHANGE IN PLAN.—Rules similar to the rules of subparagraph (B) shall apply in the case of employees who are not highly compensated employees and who are affected by any change in the terms of the plan, except that the determination of such employees' employer-provided benefits (actually provided or made available) shall be determined as of the date after such change selected by the employer and permitted under regulations prescribed by the Secretary.

(D) TESTING DAY.—For purposes of this paragraph, the term "testing day" means—

(i) the day designated in the plan as the testing day for purposes of this paragraph, or

(ii) if there is no day so designated, the last day of the testing year.

(E) LIMITATIONS.—

(i) DESIGNATION MUST BE CONSISTENT FOR ALL PLANS OF SAME TYPE.—No day may be designated under subparagraph (D)(i) with respect to any plan unless the same day is so designated with respect to all other plans of the employer of the same type.

(ii) DESIGNATION BINDING.—Any designation under subparagraph (D)(i) shall apply to the testing year for which made and all subsequent years unless revoked with the consent of the Secretary.

(F) SPECIAL RULE FOR MULTIPLE EMPLOYER PLAN.—In the case of a multiemployer plan or any other plan maintained by more than 1 employer, each employer may, subject to such rules as the Secretary may prescribe, elect its own testing year under paragraph (13) of subsection (j) and its own testing date under this paragraph.[45]

(7) SAMPLING.—For purposes of determining whether a plan is a discriminatory employee benefit plan (but not for purposes of identifying the highly compensated employees who have a discriminatory excess or the amount of any such excess), determinations under this section may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

(A) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

(B) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.[46]

(h) EXCLUDED EMPLOYEES.—

(1) IN GENERAL.—The following employees shall be excluded from consideration under this section:

(A) Employees who have not completed 1 year of service (or in the case of core benefits under a health plan, 6 months of service). An employee shall be excluded from consideration until the 1st day of the 1st month (or 1st day of a period of less than 31 days specified by the plan)[47] beginning after completion of the period of service required under the preceding sentence.

(B) Employees who normally work less than 17 1/2 hours per week.

(C) Employees who normally work during not more than 6 months during any year.

(D) Employees who have not attained age 21.

(E) Employees who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that the type of benefits provided under the plan was the subject of good faith bargaining between the employee representatives and such employer or employers.

(F) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(G) Employees who are students if—

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[45] P.L. 100-647, §1011B(a)(6), struck out the former paragraph (6).
P.L. 100-647, §3021(a)(2)(A), added this paragraph (6).
[46] P.L. 100-647, §3021(a)(3), added paragraph (7).
[47] P.L. 100-647, §1011B(a)(7), inserted "(or 1st day of a period of less than 31 days specified by the plan)".

(i) such students are performing services described in section 3121(b)(10), and

(ii) core health coverage is made available to such students by such employer.[48]

Subparagraphs (A), (B), (C), and (D) shall be applied by substituting a shorter period of service, smaller number of hours or months, or lower age specified in the plan for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph.

(2) CERTAIN EXCLUSIONS NOT TO APPLY IF EXCLUDED EMPLOYEES COVERED.—Except to the extent provided in regulations, employees shall not be excluded from consideration under any subparagraph of paragraph (1) (other than subparagraph (F)) unless no employee described in such subparagraph (determined with regard to the last sentence of paragraph (1)) is eligible under the plan.

(3) EXCLUSION MUST APPLY TO ALL PLANS.—

(A) IN GENERAL.—An exclusion shall apply under any subparagraph of paragraph (1) (other than subparagraph (F) thereof) only if the exclusion applies to all statutory employee benefit plans of the employer of the same type. In the case of a cafeteria plan, all benefits under the cafeteria plan shall be treated as provided under plans of the same type.

(B) EXCEPTION.—Subparagraph (A) shall not apply to any difference in waiting periods for core and noncore benefits provided by health plans.

(4) EXCEPTION FOR SEPARATE LINE OF BUSINESS.—If any line of business is treated separately under subsection (g)(5)[49], then paragraphs (2) and (3) shall be applied separately to such line of business.

(5) REQUIREMENTS MAY BE MET SEPARATELY WITH RESPECT TO EXCLUDED GROUP.—Notwithstanding paragraphs (2) and (3), if employees do not meet minimum age or service requirements described in paragraph (1) (without regard to the last sentence thereof) and are covered under a plan of the employer which meets the requirements of this section separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of this section.

(6) SPECIAL RULE FOR MULTIEMPLOYER PLAN.—Except as provided in regulations, any multiemployer plan shall not be taken into account in applying subparagraph (A), (B), (C), or (D) of paragraph (1) with respect to other plans of the employer. For purposes of this paragraph, a rule similar to the rule of subsection (g)(3)(E)(ii) shall apply.[50]

(i) STATUTORY EMPLOYEE BENEFIT PLAN.—For purposes of this section—

(1) IN GENERAL.—The term "statutory employee benefit plan" means—

(A) an accident or health plan (within the meaning of section 105(e)), and

(B) any plan of an employer for providing group-term life insurance (within the meaning of section 79).

(2) EMPLOYER MAY ELECT TO TREAT OTHER PLANS AS STATUTORY EMPLOYEE BENEFIT PLAN.—An employer may elect to treat any of the following plans as statutory employee benefit plans:

(A) A qualified group legal services plan (within the meaning of section 120(b)).

(B) An educational assistance program (within the meaning of section 127(b)).

(C) A dependent care assistance program (within the meaning of section 129(d)).

An election under this paragraph with respect to any plan shall apply with respect to all plans of the same type as such plan.

(3) PLANS OF THE SAME TYPE.—2 or more plans shall be treated as of the same type if such plans are described in the same subparagraph of paragraph (1) or (2).

(4) CHURCH PLANS.—The term "statutory employee benefit plan" shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term "church" has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).[51]

(j) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) HIGHLY COMPENSATED EMPLOYEE.—The term "highly compensated employee" has the meaning given such term by section 414(q).

(2) HEALTH PLAN.—The term "health plan" means any plan described in paragraph (1)(A) of subsection (i).

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[48] P.L. 100-647, §3021(a)(5)(B), added subparagraph (G).
[49] P.L. 100-647, §1011B(a)(28), struck out "(h)(5)" and substituted "(g)(5)".
[50] P.L. 100-647, §3021(a)(5)(A), added paragraph (6).
[51] P.L. 100-647, §6051(a), added paragraph (4).

(3) TREATMENT OF FORMER EMPLOYEES.—Except to the extent provided in regulations, this section shall be applied separately to former employees under requirements similar to the requirements that apply to employees.

(4) GROUP-TERM LIFE INSURANCE PLANS.—

(A) IN GENERAL.—Any group-term life insurance plan shall not be treated as 2 or more separate plans merely because the amount of life insurance under the plan on behalf of employees bears a uniform relationship to the compensation [52] of such employees.

(B) LIMITATION ON COMPENSATION.—For purposes of subparagraph (A), compensation in excess of the amount applicable under section 401(a)(17) shall not be taken into account.

(C) LIMITATION.—This paragraph shall not apply to any plan if such plan is combined with plans of other types pursuant to an election under subsection (g)(4).

(D) COMPENSATION.—For purposes of applying this paragraph—

(i) IN GENERAL.—Compensation shall be determined on any basis determined by the employer which does not discriminate in favor of highly compensated employees.

(ii) SPECIAL RULES FOR 1989 AND 1990.—In the case of testing years beginning in 1989 or 1990, the employer may elect to treat base compensation as compensation.[53]

(5) SPECIAL RULE FOR EMPLOYEES WORKING LESS THAN 30 HOURS PER WEEK.—Any health plan shall not fail to meet the requirements of this section merely because the employer-provided benefit is proportionately reduced for employees who normally work less than 30 hours per week.[54]

(6) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—In the case of a statutory employee benefit plan[55]—

(A) TREATMENT AS EMPLOYEE, ETC.—The term "employee" includes any self-employed individual (as defined in section 401(c)(1)), and the term "compensation" includes such individual's earned income (as defined in section 401(c)(2)).

(B) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is treated as an employee under subparagraph (A).

(7) CERTAIN PLANS TREATED AS MEETING OTHER NONDISCRIMINATION REQUIREMENTS.—If an employer makes an election under subsection (i)(2) to have this section apply to any plan and such plan meets the requirements of this section, such plan shall be treated as meeting any other nondiscrimination requirement imposed on such plan (other than any requirement under section 120(c)(3), 127(b)(3), or 129(d)(4)).

(8) SPECIAL RULES FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—

(A) IN GENERAL.—If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this section shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

(i) such requirements were met immediately before each such change, and

(ii) either—

(I) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members in such group), or

(II) such plan meets such other requirements as the Secretary may prescribe by regulation.[56]

(B) TRANSITION PERIOD.—For purposes of subparagraph (A), the term "transition period" means the period—

(i) beginning on the date of the change in members of a group, and

(ii) ending on the last day of the 1st plan year beginning after the date of such change.

(9) COORDINATION WITH MEDICARE, ETC.—If a plan may be coordinated with health benefits provided under any Federal, State, or foreign law or under any other health plan covering the employee or family member of the employee, such plan shall not fail to meet the requirements of this section with respect to health

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[52] P.L. 100-647, §3021(b)(3)(B), struck out "(within the meaning of section 414(s))".
[53] P.L. 100-647, §3021(b)(3)(A), added subparagraph (D).
[54] P.L. 100-647, §3021(a)(12), struck out a sentence.
[55] P.L. 100-647, §1011B(a)(21), struck out "described in subparagraph (A), (B), or (C) of subsection (i)(2)".
[56] P.L. 100-647, §3021(a)(13)(A), amended clause (ii) in its entirety.

benefits merely because the amount of such benefits provided to any employee or family member of any employee are coordinated in a manner which does not discriminate in favor of highly compensated employees.

(10) DISABILITY BENEFITS.—

(A) IN GENERAL.—If a plan may be coordinated with disability benefits provided under any Federal, State, or foreign law or under any other plan covering the employee, such plan shall not fail to meet the requirements of this section with respect to disability benefits merely because the amount of such benefits provided to an employee are coordinated in a manner which does not discriminate in favor of highly compensated employees.

(B) CERTAIN DISABILITY PLANS EXEMPT FROM NONDISCRIMINATION RULES.—Subsection (a) shall not apply to any disability coverage other than disability coverage the benefits of which are excludable from gross income under section 105(b) or (c).

(11) SEPARATE APPLICATION IN THE CASE OF OPTIONS.—Except as provided in subsection (g)(1), each[57] option or different benefit shall be treated as a separate plan.

(12) EMPLOYERS WITH ONLY HIGHLY COMPENSATED EMPLOYEES.—The requirements of subsections (d) and (e) shall not apply to any statutory employee benefit plan for any year for which the only employees of the employer maintaining the plan are highly compensated employees.[58]

(13) TESTING YEAR.—The term "testing year" means—

(A) any 12-month period beginning with the calendar month designated in the plan for purposes of this section, or

(B) if there is no such designation, the calendar year.

No period may be designated under subparagraph (A) unless the same period is designated with respect to all other plans of the employer of the same type. Any designation under subparagraph (A) may be changed only with the consent of the Secretary.[59]

(k) REQUIREMENT THAT PLAN BE IN WRITING, ETC.—

(1) IN GENERAL.—Notwithstanding any provision of part III of this subchapter, gross income of an employee shall include an amount equal to such employee's employer-provided benefit for the taxable year under an employee benefit plan to which this subsection applies unless, except to the extent provided in regulations—

(A) such plan is in writing,

(B) the employees' rights under such plan are legally enforceable,

(C) employees are provided reasonable notification of benefits available in the plan,

(D) such plan is maintained for the exclusive benefit of employees, and

(E) such plan was established with the intention of being maintained for an indefinite period of time.

Such inclusion shall be coordinated (under regulations prescribed by the Secretary) with any inclusion under subsection (a) with respect to such plan.[60] In the case of a statutory employee benefit plan described in subsection (i)(1)(B), any amount required to be included in gross income under this subsection shall be included in the gross income of the beneficiary.[61]

(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

(A) any statutory employee benefit plan,

(B) a qualified tuition reduction program (within the meaning of section 117(d)),

(C) a cafeteria plan (within the meaning of section 125),

(D) a fringe benefit program providing no-additional-cost services, qualified employee discounts, or employer-operated eating facilities which are excludable from gross income under section 132, and

(E) a plan to which section 505 applies.

(3) SPECIAL RULE FOR DETERMINING INCLUSION.—For purposes of paragraph (1), an employee's employer-provided benefit shall be the value of the benefits provided to the employee.

(4) PLANS TO WHICH CONTRIBUTIONS ARE MADE BY MORE THAN 1 EMPLOYER.—For purposes of paragraph (1)(D), in the case of a plan to which contributions are made by more than 1 employer, each employer shall be treated as employing employees of all other employers.

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[57] P.L. 100-647, §3021(a)(9), struck out "Each" and substituted "Except as provided in subsection (g)(1), each".
[58] P.L. 100-647, §1011B(a)(8), added paragraph (12).
[59] P.L. 100-647, §3021(a)(1)(B), added paragraph (13).
[60] P.L. 100-647, §1011B(a)(29), amended this sentence in its entirety.
[61] P.L. 100-647, §1011B(a)(29), added this sentence.

(5) LOSS OF EXEMPTION FOR CERTAIN PLANS.—If a plan described in paragraph (2)(E) fails to meet the requirements of paragraph (1), the organization which is part of such plan shall not be exempt from tax under section 501(a).[62]

(l) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—If an employee of an employer maintaining a plan is required to include any amount in gross income under this section for any plan year ending with or within a calendar year, the employer shall separately include such amount on the statement which the employer is required to provide the employee under section 6051(a) (and any statement required to be furnished under section 6051(d)).

(2) PENALTY.—

For penalty for failing to report, see section 6652(k)[63].—

(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in case of individuals not employees of the employer throughout the testing[64] year.

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SEC. 107. RENTAL VALUE OF PARSONAGES.

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

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SEC. 117. QUALIFIED SCHOLARSHIPS.

(a) GENERAL RULE.—Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) QUALIFIED SCHOLARSHIP.—For purposes of this section—

(1) IN GENERAL.—The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) QUALIFIED TUITION AND RELATED EXPENSES.—For purposes of paragraph (1), the term "qualified tuition and related expenses" means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) LIMITATION.—Subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(d) QUALIFIED TUITION REDUCTION.—

(1) IN GENERAL.—Gross income shall not include any qualified tuition reduction.

(2) QUALIFIED TUITION REDUCTION.—For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

(3) REDUCTION MUST NOT DISCRIMINATE IN FAVOR OF HIGHLY COMPENSATED, ETC.—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

(4) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of this subsection, there shall[65] be excluded from consideration employees who are[66] excluded from consideration under section 89(h).

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[62] P.L. 100-647, §1011B(a)(9), added paragraph (5).
[63] P.L. 100-647, §1011B(a)(34), struck out "6652(l)" and substituted "6652(k)".
[64] See footnote 14.
[65] P.L. 100-647, §1011B(a)(31)(B)(i), struck out "may" and substituted "shall".
[66] P.L. 100-647, §1011B(a)(31)(B)(ii), struck out "may be" and substituted "are".

(5) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase "(below the graduate level)".[67]

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SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

(a) MEALS AND LODGING FURNISHED TO EMPLOYEE, HIS SPOUSE, AND HIS DEPENDENTS, PURSUANT TO EMPLOYMENT.—There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) SPECIAL RULES.—For purposes of subsection (a)—

(1) PROVISIONS OF EMPLOYMENT CONTRACT OR STATE STATUTE NOT TO BE DETERMINATIVE.—In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) CERTAIN FACTORS NOT TAKEN INTO ACCOUNT WITH RESPECT TO MEALS.—In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) CERTAIN FIXED CHARGES FOR MEALS.—

(A) IN GENERAL.—If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) APPLICATION OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(c) EMPLOYEES LIVING IN CERTAIN CAMPS.—

(1) IN GENERAL.—In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) CAMP.—For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) LODGING FURNISHED BY CERTAIN EDUCATIONAL INSTITUTIONS TO EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) EXCEPTION IN CASES OF INADEQUATE RENT.—Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value[68] of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

[67] P.L. 100-647, §4001(b)(2), added paragraph (5).
[68] P.L. 100-647, §1011B(d)(1), struck out "(as of the close of the calendar year in which the taxable year begins)".

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.[69]

(3) QUALIFIED CAMPUS LODGING.—For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term "educational institution" means an institution described in section 170(b)(1)(A)(ii).

SEC. 120. AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) EXCLUSION BY EMPLOYEE FOR CONTRIBUTIONS AND LEGAL SERVICES PROVIDED BY EMPLOYER.—Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.[70]

(b) QUALIFIED GROUP LEGAL SERVICES PLAN.—For purposes of this section, a qualified group legal services plan is a separate plan of an employer—

(1) under which the employer provides specified personal legal services to employees (or their spouses or dependents) through the prepayment of, or the provision in advance for, any portion of the legal fees for such services, and

(2) which meets the requirements of subsection (c) and section 89(k).

(c) REQUIREMENTS.—

(1) DISCRIMINATION.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) ELIGIBILITY.—The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall[71] be excluded from consideration employees who are[72] excluded from consideration under section 89(h).

(3) CONTRIBUTION LIMITATION.—Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) NOTIFICATION.—The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) CONTRIBUTIONS.—Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

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[69] P.L. 100-647, §1011B(d)(2), added this sentence.
[70] P.L. 100-647, §4002(b)(1), added this sentence.
[71] See footnote 65.
[72] See footnote 66.

(1) EMPLOYEE.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) ALLOCATIONS.—Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) DEPENDENT.—The term "dependent" has the meaning given to it by section 152.

(5) EXCLUSIVE BENEFIT.—In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) ATTRIBUTION RULES.—For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) TIME OF NOTICE TO SECRETARY.—A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) TERMINATION.—This section and section 501(c)(20) shall not apply to taxable years ending after December 31, 1988[73].

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SEC. 125. CAFETERIA PLANS.

(a) GENERAL RULE.—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.[74]

(b) PROHIBITION AGAINST DISCRIMINATION AS TO ELIGIBILITY TO PARTICIPATE.—

(1) HIGHLY COMPENSATED EMPLOYEES.—In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year[75] unless the plan is available to a group of employees as qualify under a classification set up by the employer and which the Secretary find[76] not to be discriminatory in favor of highly compensated employees.

(2) KEY EMPLOYEES.—In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any plan year[77] if the qualified benefits provided to key employees under the plan exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.[78]

(3) EXCLUDABLE EMPLOYEES.—For purposes of this subsection, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).

(c) CAFETERIA PLAN DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "cafeteria plan" means a plan which meets the requirements of section 89(k) and under which—

(A) all participants are employees, and

(B) the participant may choose among 2 or more benefits consisting of cash and qualified benefits.[79]

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[73] P.L. 100-647, §4002(a), struck out "1987" and substituted "1988".
[74] P.L. 100-647, §1011B(a)(11)(A), amended subsection (a) in its entirety.
[75] P.L. 100-647, §1011B(a)(11)(B), struck out "A plan shall be treated as failing to meet the requirements of this subsection" and substituted "In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year".
[76] As in original.
[77] P.L. 100-647, §1011B(a)(11)(C), struck out "a plan shall be treated as failing to meet the requirements of this subsection" and substituted "subsection (a) shall not apply to any plan year".
[78] P.L. 100-647, §1011B(a)(13)(B), amended this sentence in its entirety.
[79] P.L. 100-647, §1011B(a)(12), amended subparagraph (B) in its entirety.

(2) DEFERRED COMPENSATION PLANS EXCLUDED.—

(A) IN GENERAL.—The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(B) EXCEPTION FOR CASH AND DEFERRED ARRANGEMENTS.—Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural electric cooperative plan (within the meaning of section 401(k)(7))[80] which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) EXCEPTION FOR CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance. In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.[81]

(d) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(e) QUALIFIED BENEFITS DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "qualified benefit" means any benefit which, with the application of subsection (a) and without regard to section 89(a)[82], is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132).

(2) CERTAIN BENEFITS INCLUDED.—The term "qualified benefits" includes—

(A) any group-term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)[83], and

(B) any other benefit permitted under regulations.

(f) COLLECTIVELY BARGAINED PLAN NOT CONSIDERED DISCRIMINATORY.—For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(g) CROSS REFERENCES.—

For reporting and recordkeeping requirements, see section 6039D.

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SEC. 127. EDUCATIONAL ASSISTANCE PROGRAMS.

(a) EXCLUSION FROM GROSS INCOME.—

(1) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 MAXIMUM EXCLUSION.—If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) EDUCATIONAL ASSISTANCE PROGRAM.—

(1) IN GENERAL.—For purposes of this section, an educational assistance program is a plan of an employer—

(A) under which the employer provides employees with educational assistance, and

(B) which meets the requirements of paragraphs (2) through (5) and section 89(k).

(2) ELIGIBILITY.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees

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[80] P.L. 100-647, §1018(t)(6), inserted "or rural electric cooperative plan (within the meaning of section 401(k)(7))".

[81] P.L. 100-647, §6051(b), added this sentence.

[82] P.L. 100-647, §1011B(a)(13)(A), inserted "and without regard to section 89(a)".

[83] P.L. 100-647, §4002(b)(2), inserted "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)".

(within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall[84] be excluded from consideration employees who are[85] excluded from consideration under section 89(h).

(3) PRINCIPAL SHAREHOLDERS OR OWNERS.—Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) OTHER BENEFITS AS AN ALTERNATIVE.—A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) NO FUNDING REQUIRED.—A program referred to in paragraph (1) is not required to be funded.

(6) NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

(1) EDUCATIONAL ASSISTANCE.—The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.[86]

(2) EMPLOYEE.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) ATTRIBUTION RULES.—

(A) OWNERSHIP OF STOCK.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) INTEREST IN UNINCORPORATED TRADE OR BUSINESS.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) CERTAIN TESTS NOT APPLICABLE.—An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) RELATIONSHIP TO CURRENT LAW.—This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section.

(8) COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in

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[84] See footnote 65.
[85] See footnote 66.
[86] P.L. 100-647, §4001(b)(1), added this sentence.

section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase "(below the graduate level)".

(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1988[87].

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SEC. 129. DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) EXCLUSION.—

(1) IN GENERAL.—Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) LIMITATION OF EXCLUSION.—

(A) IN GENERAL.—The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) YEAR OF INCLUSION.—The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) MARITAL STATUS.—For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).[88]

For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

(b) EARNED INCOME LIMITATION.—

(1) IN GENERAL.—The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) SPECIAL RULE FOR CERTAIN SPOUSES.—For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) PAYMENTS TO RELATED INDIVIDUALS.—No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 151(c)(3)) under the age of 19 at the close of such taxable year.

(d) DEPENDENT CARE ASSISTANCE PROGRAM.—

(1) IN GENERAL.—For purposes of this section, a dependent care assistance program is a plan of an employer—

(A) under which the employer provides employees with dependent care assistance, and

(B) which meets the requirements of paragraphs (2) through (7)[89] and section 89(k).

(2) DISCRIMINATION.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) ELIGIBILITY.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.[90]

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[87] P.L. 100-647, §4001(a), struck out "1987" and substituted "1988".
[88] P.L. 100-647, §1011B(c)(2)(A), amended paragraph (2) in its entirety.
[89] P.L. 100-647, §1011B(a)(30), struck out "(6)" and substituted "(7)".
[90] P.L. 100-647, §1011B(a)(31)(A)(i), struck out "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).".

(4) PRINCIPAL SHAREHOLDERS OR OWNERS.—Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) NO FUNDING REQUIRED.—A program referred to in paragraph (1) is not required to be funded.

(6) STATEMENT OF EXPENSES.—The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(7)[91] BENEFITS.—

(A) IN GENERAL.—A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer[92] is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer[93].

(B) SALARY REDUCTION AGREEMENTS.—For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard[94] any employees whose compensation[95] is less than $25,000. For purposes of this subparagraph, the term "compensation" has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.[96]

(8) EXCLUDED EMPLOYEES.—For purposes of paragraphs (2), (3), and (7), there shall be excluded from consideration employees who are excluded from consideration under section 89(h).[97]

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) DEPENDENT CARE ASSISTANCE.—The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) EARNED INCOME.—The term "earned income" shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) EMPLOYEE.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) ATTRIBUTION RULES.—

(A) OWNERSHIP OF STOCK.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) INTEREST IN UNINCORPORATED TRADE OR BUSINESS.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) UTILIZATION TEST NOT APPLICABLE.—A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) (other than paragraphs (4) and (7) thereof)[98] merely because of utilization rates for the different types of assistance made available under the program.

(7) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the employee under any other section of this

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[91] P.L. 100-647, §1011B(a)(14), redesignated paragraph (8) as paragraph (7).
[92] P.L. 100-647, §1011B(a)(15)(A), inserted "under all plans of the employer".
[93] See footnote 92.
[94] P.L. 100-647, §1011B(a)(15)(B), struck out "there shall be disregarded" and substituted "a plan may disregard".
[95] P.L. 100-647, §3021(a)(14)(A), struck out "(within the meaning of section 414(q)(7)*)".
* P.L. 100-647, §1011B(a)(15)(C), struck out "415(q)(7)" and substituted "414(q)(7)".
[96] P.L. 100-647, §3021(a)(14)(B), added this sentence.
[97] P.L. 100-647, §1011B(a)(31)(A)(ii), added paragraph (8).
[98] P.L. 100-647, §1011B(a)(18), inserted "(other than paragraphs (4) and (7) thereof)".

chapter for any amount excluded from the gross income of the employee by reason of this section.

(8) TREATMENT OF ONSITE FACILITIES.—In the case of an onsite facility maintained by an employer[98], except to the extent provided in regulations, the amount of dependent care assistance provided to an employee[100] excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee[101], and

(B) the value of the services provided with respect to such dependent[102].

(9) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO SERVICE PROVIDER.—No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.[103]

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SEC. 132. CERTAIN FRINGE BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,

(2) qualified employee discount,

(3) working condition fringe, or

(4) de minimis fringe.

(b) NO-ADDITIONAL-COST SERVICE DEFINED.—For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) QUALIFIED EMPLOYEE DISCOUNT DEFINED.—For purposes of this section—

(1) QUALIFIED EMPLOYEE DISCOUNT.—The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) GROSS PROFIT PERCENTAGE.—

(A) IN GENERAL.—The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) DETERMINATION OF GROSS PROFIT PERCENTAGE.—Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) EMPLOYEE DISCOUNT DEFINED.—The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

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[98]P.L. 100-647, §1011B(c)(1)(A), inserted "maintained by an employer".
[100]P.L. 100-647, §1011B(c)(1)(B), inserted "of dependent care assistance provided to an employee".
[101]P.L. 100-647, §1011B(c)(1)(C), inserted "of the facility by a dependent of the employee".
[102]P.L. 100-647, §1011B(c)(1)(D), inserted "with respect to such dependent".
[103]P.L. 100-485, §703(c)(2), added paragraph (9).

(B) the price at which such property or services are being offered by the employer to customers.

(4) QUALIFIED PROPERTY OR SERVICES.—The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming[104] services.

(d) WORKING CONDITION FRINGE DEFINED.—For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) DE MINIMIS FRINGE DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) TREATMENT OF CERTAIN EATING FACILITIES.—The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(f) CERTAIN INDIVIDUALS TREATED AS EMPLOYEES FOR PURPOSES OF SUBSECTIONS (a)(1) AND (2).—For purposes of paragraphs (1) and (2) of subsection (a)—

(1) RETIRED AND DISABLED EMPLOYEES AND SURVIVING SPOUSE OF EMPLOYEE TREATED AS EMPLOYEE.—With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) SPOUSE AND DEPENDENT CHILDREN.—

(A) IN GENERAL.—Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) DEPENDENT CHILD.—For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 151(e)(3)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) SPECIAL RULE FOR PARENTS IN THE CASE OF AIR TRANSPORTATION.—Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(g) RECIPROCAL AGREEMENTS.—For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(h) SPECIAL RULES.—

(1) EXCLUSIONS UNDER SUBSECTION (a)(1) AND (2) APPLY TO OFFICERS, ETC., ONLY IF NO DISCRIMINATION.—Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of this paragraph and

[104] As in original. Should be "performing".

subsection (e), there shall[105] be excluded from consideration employees who are[106] excluded from consideration under section 89(h).

(2) SPECIAL RULE FOR LEASED SECTIONS OF DEPARTMENT STORES.—

(A) IN GENERAL.—For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) LEASED SECTION OF DEPARTMENT STORE.—For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) AUTO SALESMEN.—

(A) IN GENERAL.—For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) QUALIFIED AUTOMOBILE DEMONSTRATION USE.—For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) PARKING.—The term "working condition fringe" includes parking provided to an employee on or near the business premises of the employer.

(5) ON-PREMISES GYMS AND OTHER ATHLETIC FACILITIES.—

(A) IN GENERAL.—Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) ON-PREMISES ATHLETIC FACILITY.—For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

(6) SPECIAL RULE FOR AFFILIATES OF AIRLINES.—

(A) IN GENERAL.—If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) QUALIFIED AFFILIATE.—For purposes of this paragraph, the term "qualified affiliate" means any corporation which is predominantly engaged in airline-related services.

(C) AIRLINE-RELATED SERVICES.—For purposes of this paragraph, the term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

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[105]See footnote 65.
[106]See footnote 66.

(D) AFFILIATED GROUP.—For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).

(7) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(8) AIR CARGO.—For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.[107]

(i) CUSTOMERS NOT TO INCLUDE EMPLOYEES.—For purposes of this section (other than subsection (c)(2)), the term "customers" shall only include customers who are not employees.

(j) SECTION NOT TO APPLY TO FRINGE BENEFITS EXPRESSLY PROVIDED FOR ELSEWHERE.—This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(k) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) CHARITABLE CONTRIBUTIONS AND GIFTS EXCEPTED.—No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) ILLEGAL BRIBES, KICKBACKS, AND OTHER PAYMENTS.—

(1) ILLEGAL PAYMENTS TO GOVERNMENT OFFICIALS OR EMPLOYEES.—No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) OTHER ILLEGAL PAYMENTS.—No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

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[107] P.L. 100-647, §6066(a), added paragraph (8).

(3) KICKBACKS, REBATES, AND BRIBES UNDER MEDICARE AND MEDICAID.—No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) CAPITAL CONTRIBUTIONS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION.—For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) APPEARANCES, ETC., WITH RESPECT TO LEGISLATION.—

(1) IN GENERAL.—The deduction allowed by subsection (a) shall include all the ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(A) in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(B) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by such organization.

(2) LIMITATION.—The provisions of paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred (whether by way of contribution, gift, or otherwise)—

(A) for participation in, or intervention in, any political campaign on behalf of any candidate for public office, or

(B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(f) FINES AND PENALTIES.—No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAWS.—If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(i)[108] STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—

(1) IN GENERAL.—For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

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[108] As in original. No subsection (h).

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) LEGISLATIVE DAYS.—For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) SECTION NOT TO APPLY TO LEGISLATORS WHO RESIDE NEAR CAPITOL.—For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

(i) GROUP HEALTH PLANS.—

(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

(2)[109] GROUP HEALTH PLAN.—For purposes of this subsection the term "group health plan" means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d)) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.

(j) CERTAIN FOREIGN ADVERTISING EXPENSES.—

(1) IN GENERAL.—No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) BROADCAST UNDERTAKING.—For purposes of paragraph (1), the term "broadcast undertaking" includes (but is not limited to) radio and television stations.

(k)[110] STOCK REDEMPTION EXPENSES.—

(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the redemption of its stock.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) CERTAIN SPECIFIC DEDUCTIONS.—Any—

(i) deduction allowable under section 163 (relating to interest), or

(ii) deduction for dividends paid (within the meaning of section 561).

(B) STOCK OF CERTAIN REGULATED INVESTMENT COMPANIES.—Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(l)[111] SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—

(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 25 percent of the amount paid during the taxable year

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[109] P.L. 100-647, §3011(b)(2), struck out paragraph (2) and redesignated paragraph (3) as paragraph (2).
[110] P.L. 100-647, §3011(b)(3), struck out subsection (k).
P.L. 100-647, §3011(b)(3)(A), redesignated subsection (l) as subsection (k).
[111] P.L. 100-647, §3011(b)(3)(B), redesignated subsection (m) as subsection (l).

for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(2) LIMITATIONS.—

(A) DOLLAR AMOUNT.—No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established[112].

(B) REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.

(C) OTHER COVERAGE.—Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.

(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.[113]

(5)[114] TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1989.

(m)[115] CROSS REFERENCE.—

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

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SEC. 164. TAXES.

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(f) DEDUCTION FOR ONE-HALF OF SELF-EMPLOYMENT TAXES.—

(1) IN GENERAL.—In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) DEDUCTION TREATED AS ATTRIBUTABLE TO TRADE OR BUSINESS.—For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

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SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) Allowance of Deduction.—

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis.—In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

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[112]P.L. 100-647, §1011B(b)(3), inserted "derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established".
[113]P.L. 100-647, §1011B(b)(1), added this paragraph (4).
[114]P.L. 100-647, §1011B(b)(1), redesignated paragraph (4) as paragraph (5).
[115]P.L. 100-647, §1011B(b)(2), redesignated this subsection as subsection (n).
P.L. 100-647, §3011(b)(3)(C), redesignated subsection (n) as subsection (m).

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property.—For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage Limitations.—

(1) Individuals.—In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule.—Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (E), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions.—Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS DESCRIBED IN SUBPARAGRAPH (A) OF CERTAIN CAPITAL GAIN PROPERTY.—

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term "capital gain property" means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) SPECIAL LIMITATION WITH RESPECT TO CONTRIBUTIONS OF CAPITAL GAIN PROPERTY TO ORGANIZATIONS NOT DESCRIBED IN SUBPARAGRAPH (A).—

(i) IN GENERAL.—In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) CARRYOVER.—If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Certain private foundations.—The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) Contribution base defined.—For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations.—In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

(A) this section,

(B) part VIII (except section 248),

(C) any net operating loss carryback to the taxable year under section 172, and

(D) any capital loss carryback to the taxable year under section 1212(a)(1).

(c) Charitable Contribution Defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to)[116] any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery

[116] P.L. 100-203, §10711(a)(1), inserted "(or in opposition to)".

corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term "charitable contribution" also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of Excess Contributions.—

(1) Individuals.—

(A) In general.—In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the "contribution year") exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.—In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations.—

(A) In general.—Any contribution made by a corporation in a taxable year (hereinafter in this paragraph referred to as the "contribution year") in excess of the amount deductible for such year under subsection (b)(2) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers.—For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain Contributions of Ordinary Income and Capital Gain Property.—

(1) General rule.—The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(2) Allocation of basis.—For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF INVENTORY AND OTHER PROPERTY.—

(A) QUALIFIED CONTRIBUTIONS.—For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221, by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) AMOUNT OF REDUCTION.—The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) SPECIAL RULE FOR CONTRIBUTIONS OF SCIENTIFIC PROPERTY USED FOR RESEARCH.—

(A) LIMIT ON REDUCTION.—In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) QUALIFIED RESEARCH CONTRIBUTIONS.—For purposes of this paragraph, the term "qualified research contribution" means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221, but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) CONSTRUCTION OF PROPERTY BY TAXPAYER.—For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) CORPORATION.—For purposes of this paragraph, the term "corporation" shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) SPECIAL RULE FOR CONTRIBUTIONS OF STOCK FOR WHICH MARKET QUOTATIONS ARE READILY AVAILABLE.—

(A) IN GENERAL.—Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) QUALIFIED APPRECIATED STOCK.—Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) DONOR MAY NOT CONTRIBUTE MORE THAN 10 PERCENT OF STOCK OF CORPORATION.—

(i) IN GENERAL.—In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) SPECIAL RULE.—For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(D) TERMINATION.—This paragraph shall not apply to contributions made after December 31, 1994.

(f) Disallowance of Deduction in Certain Cases and Special Rules.—

(1) In general.—No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust.—

(A) Remainder interest.—In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.—No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treated, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts.—In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception.—This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property.—

(A) In general.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property.—For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest.—If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) DEDUCTIONS FOR OUT-OF-POCKET EXPENDITURES.—No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) REFORMATIONS TO COMPLY WITH PARAGRAPH (2).—

(A) IN GENERAL.—A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) RULES SIMILAR TO SECTION 2055(e)(3) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(g) Amounts Paid To Maintain Certain Students as Members of Taxpayer's Household.—

(1) In general.—Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152, or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations.—

(A) Amount.—Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement.—Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined.—For purposes of paragraph (1), the term "relative of the taxpayer" means an individual who, with respect to the taxpayer, bears any of the relationships described in paragraphs (1) through (8) of section 152(a).

(4) No other amount allowed as deduction.—No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) QUALIFIED CONSERVATION CONTRIBUTION.—

(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) CONSERVATION PURPOSE DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including

extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer in made.

(5) EXCLUSIVELY FOR CONSERVATION PURPOSES.—For purposes of this subsection—

(A) CONSERVATION PURPOSE MUST BE PROTECTED.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) NO SURFACE MINING PERMITTED.—

(i) IN GENERAL.—Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) SPECIAL RULE.—With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) QUALIFIED MINERAL INTEREST.—For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) RULE FOR NONITEMIZATION OF DEDUCTIONS.—

(1) IN GENERAL.—In the case of an individual who does not itemize his deductions for the taxable year, the applicable percentage of the amount allowable under subsection (a) for the taxable year shall be taken into account as a direct charitable deduction under section 63.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined under the following table:

For taxable years beginning in—	The applicable percentage is-
1982, 1983 or 1984	25
1985	50
1986 or thereafter	100.

(3) LIMITATION FOR TAXABLE YEARS BEGINNING BEFORE 1985.—In the case of a taxable year beginning before 1985, the portion of the amount allowable under subsection (a) to which the applicable percentage shall be applied—

(A) shall not exceed $100 for taxable years beginning in 1982 or 1983, and

(B) shall not exceed $300 for taxable years beginning in 1984.

In the case of a married individual filing a separate return, the limit under subparagraph (A) shall be $50, and the limit under subparagraph (B) shall be $150.

(4) TERMINATION.—The provisions of this subsection shall not apply to contributions made after December 31, 1986.

(j) STANDARD MILEAGE RATE FOR USE OF PASSENGER AUTOMOBILE.—For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.

(k) DENIAL OF DEDUCTION FOR CERTAIN TRAVEL EXPENSES.—No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(l) DISALLOWANCE OF DEDUCTIONS IN CERTAIN CASES.—

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790).

(m) TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF INSTITUTIONS OF HIGHER EDUCATION.—

(1) IN GENERAL.—For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) AMOUNT DESCRIBED.—For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of

paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.[117]

(n)[118] OTHER CROSS REFERENCES.—

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

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SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

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SEC. 217. MOVING EXPENSES.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) DEFINITION OF MOVING EXPENSES.—

(1) IN GENERAL.—For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence,

(B) of traveling (including meals and lodging) from the former residence to the new place of residence,

(C) of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence,

(D) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

(E) constituting qualified residence sale, purchase, or lease expenses.

(2) QUALIFIED RESIDENCE SALE, ETC., EXPENSES.—For purposes of paragraph (1)(E), the term "qualified residence sale, purchase, or lease expenses" means only reasonable expenses incident to—

(A) the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence (not including expenses for work performed on such residence in order to assist in its sale) which (but for this subsection and subsection (e)) would be taken into account in determining the amount realized on the sale or exchange,

(B) the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which (but for this subsection and subsection (e)) would be taken into account in determining—

(i) the adjusted basis of the new residence, or

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[117] P.L. 100-647, §6001(a), added this subsection (m).

[118] P.L. 100-647, §6001(a), redesignated subsection (m) as subsection (n).

(ii) the cost of a loan (but not including any amounts which represent payments or prepayments of interest),

(C) the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence, or

(D) the acquisition of a lease by the taxpayer or his spouse on property used by the taxpayer as his new residence in the general location of the new principal place of work (not including amounts which are payments or prepayments of rent).

(3) LIMITATIONS.—

(A) DOLLAR LIMITS.—The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed $1,500. The aggregate amount allowable as a deduction under subsection (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed $3,000, reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

(B) HUSBAND AND WIFE.—If a husband and wife both commence work at a new principal place of work within the same general location, subparagraph (A) shall be applied as if there was only one commencement of work. In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$750" for "$1,500", and by substituting "$1,500" for "$3,000".

(C) INDIVIDUALS OTHER THAN TAXPAYER.—In the case of any individual other than the taxpayer, expenses referred to in subparagraphs (A) through (D) of paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) CONDITIONS FOR ALLOWANCE.—No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 35 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 35 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) RULES FOR APPLICATION OF SUBSECTION (c)(2).—

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

(e) DENIAL OF DOUBLE BENEFIT.—The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).

(f) RULES FOR SELF-EMPLOYED INDIVIDUALS.—

(1) DEFINITION.—For purposes of this section, the term "self-employed individual" means an individual who performs personal services—

(A) as the owner of the entire interest in an unincorporated trade or business, or

(B) as a partner in a partnership carrying on a trade or business.

(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.

(g) RULES FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.—In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location;

(B) for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and

(C) without regard to the limitations under subsection (c).

(h) SPECIAL RULES FOR FOREIGN MOVES.—

(1) INCREASE IN LIMITATIONS.—In the case of a foreign move—

(A) subsection (b)(1)(D) shall be applied by substituting "90 consecutive days" for "30 consecutive days",

(B) subsection (b)(3)(A) shall be applied by substituting "$4,500" for "$1,500" and by substituting "$6,000" for "$3,000", and

(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: "In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$2,250' for '$4,500', and by substituting '$3,000' for '$6,000'."

(2) ALLOWANCE OF CERTAIN STORAGE FEES.—In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(3) FOREIGN MOVE.—For purposes of this subsection, the term "foreign move" means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(4) UNITED STATES DEFINED.—For purposes of this subsection and subsection (i), the term "United States" includes the possessions of the United States.

(i) ALLOWANCE OF DEDUCTIONS IN CASE OF RETIREES OR DECEDENTS WHO WERE WORKING ABROAD.—

(1) IN GENERAL.—In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement

of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) QUALIFIED RETIREE MOVING EXPENSES.—For purposes of paragraph (1), the term "qualified retiree moving expenses" means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) QUALIFIED SURVIVOR MOVING EXPENSES.—For purposes of paragraph (1), the term "qualified survivor moving expenses" means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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SEC. 219. RETIREMENT SAVINGS.

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(b) MAXIMUM AMOUNT OF DEDUCTION.—* * *

(2) SPECIAL RULE FOR EMPLOYER CONTRIBUTIONS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—This section shall not apply with respect to an employer contribution to a simplified employee pension.

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SEC. 274. DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC., EXPENSES.

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(n) ONLY 80 PERCENT OF MEAL AND ENTERTAINMENT EXPENSES ALLOWED AS DEDUCTION.—

(1) IN GENERAL.—The amount allowable as a deduction under this chapter for—

(A) any expense for food or beverages, and

(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 80 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to any expense if—

(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),[119]

(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

(C) such expense is covered by a package involving a ticket described in subsection (l)(1)(B),[120]

(D) in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting,[121]

(E) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or[122]

(F) such expense is for food or beverages—

(i) required by Federal law to be provided to crew members of a commercial vessel,

(ii) provided to crew members of a commercial vessel—

(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

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[119] P.L. 100-647, §1001(g)(1), amended subparagraph (A) in its entirety.
[120] P.L. 100-647, §1001(g)(4)(A)(i), struck out "or".
[121] P.L. 100-647, §1001(g)(4)(A)(ii), struck out the period and substituted ", or".
P.L. 100-647, §6003(a), struck out "or".
[122] P.L. 100-647, §1001(g)(4)(A)(iii), added subparagraph (E).
P.L. 100-647, §6003(a), struck out the period and substituted ", or".

(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.[123]

In the case of the employee, the exception of subparagraph (A[124] shall not apply to expenses described in subparagraph (E).[125] Clauses (i) and (ii) of subparagraph (F) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)).[126]

(3) QUALIFIED MEETING.—For purposes of paragraph (2)(D), the term "qualified meeting" means any convention, seminar, annual meeting, or similar business program with respect to which—

(A) an expense for food or beverages is not separately stated,

(B) more than 50 percent of the participants are away from home,

(C) at least 40 individuals attend, and

(D) such food and beverages are part of a program which includes a speaker.

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).[127];

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions

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[123]P.L. 100-647, §6003(a), added subparagraph (F).
[124]As in original. No closing parenthesis.
[125]P.L. 100-647, §1001(g)(4)(A)(iii), added this sentence.
[126]P.L. 100-647, §6003(a), added this sentence.
[127]As in original. Period should be stricken.

or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(7)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70 1/2, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2. In the case of a governmental plan or church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires.[139]

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DESIGNATED BENEFICIARY.—For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-

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[139] P.L. 100-647, §6053(a), added this sentence.

heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F)[139] CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

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[139]P.L. 100-647, §1011A(l), redesignated this subparagraph (E) as subparagraph (F).

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a[130] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed

[130]As in original. Probably should be "A".

$200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d). In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.[121]

[(18) Repealed.[122]]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes a qualified total distribution described in section 402(a)(5)(E)(i)(I). This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution.

[(21) Repealed.[123]]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market[124], and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market[125] and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.[126]

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

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[121] P.L. 100-647, §1011(d)(4), added this sentence.
[122] P.L. 97-248, §237(b); 96 Stat. 511.
[123] P.L. 99-514, §1171(b)(5); 100 Stat. 2513.
[124] P.L. 100-647, §1011B(k)(1), struck out "publicly traded" and substituted "readily tradable on an established market".
[125] See footnote 124.
[126] P.L. 100-647, §1011B(k)(2), added this sentence.

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

(i) 50 employees of the employer, or

(ii) 40 percent or more of all employees of the employer.

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) ELIGIBILITY TO PARTICIPATE.—In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.

(D) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(E) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(F) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.[137]

(G) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term "separate line of business" has the meaning given such term by section 414(r) (without regard to paragraph (7) thereof).[138]

(H) SPECIAL RULE FOR CERTAIN POLICE OR FIREFIGHTERS.—

(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term "qualified public safety employee" means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.[139]

(I)[140] REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—[141] The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

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[137] P.L. 100-647, §1011(h)(3), added this subparagraph (F).
[138] P.L. 100-647, §1011(h)(3), added subparagraph (G).
[139] P.L. 100-647, §6055(a), added subparagraph (H).
[140] P.L. 100-647, §1011(h)(3), redesignated subparagraph (F) as subparagraph (H).
P.L. 100-647, §6055(a), redesignated subparagraph (H) as subparagraph (I).
[141] P.L. 100-647, §1011A(j)(2), inserted a heading for paragraph (27) and redesignated it as subparagraph (A) with a
ading.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designated such intent at such time and in such manner as the Secretary may prescribe.[142]

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election[143].

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term "qualified election period" means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.[144]

(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether—

(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution.[145]

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—

(A) IN GENERAL.—If—

(i) a defined benefit plan (other than a multiemployer plan) adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

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[142] P.L. 100-647, §1011A(j)(1), added subparagraph (B).
[143] P.L. 100-647, §1011B(j)(1), inserted "and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election".
[144] P.L. 100-647, §1011B(j)(2), amended clause (iv) in its entirety.
[145] P.L. 100-647, §1011B(j)(6), added clause (v).

(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

(i) the lesser of—

(I) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

(II) the amount of the increase in current liability under the plan attributable to the plan amendment, over

(ii) $10,000,000.

(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

(E) DEFINITIONS.—For purposes of this paragraph, the terms "current liability", "funded current liability percentage", and "unfunded current liability" shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.[146]

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.[147]

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

(1) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—

(A) IN GENERAL.—The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

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[146] P.L. 100-203, §9341(a), added paragraph (29).
[147] P.L. 100-647, §1011(c)(7)(A), added paragraph (30).

(B) SELF-EMPLOYED INDIVIDUAL.—The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

[(B) Repealed.[148]]

(C) INCOME FROM DISPOSITION OF CERTAIN PROPERTY.—For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) OWNER-EMPLOYEE.—The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) CONTRIBUTIONS ON BEHALF OF OWNER-EMPLOYEES.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) SPECIAL RULE FOR CERTAIN FISHERMEN.—For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) ADDITIONAL REQUIREMENTS FOR QUALIFICATION OF TRUSTS AND PLANS BENEFITING OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or

[148] P.L. 89-908, §204(c); 80 Stat. 1577.

business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(2) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (1)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(3) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed.[149]]

(f) CERTAIN CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) ANNUITY DEFINED.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) MEDICAL, ETC., BENEFITS FOR RETIRED EMPLOYEES AND THEIR SPOUSES AND DEPENDENTS.—Under regulations prescribed by the Secretary, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

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[149] P.L. 98-369, §713(d)(3); 98 Stat. 958.

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i).

(i) CERTAIN UNION-NEGOTIATED PENSION PLANS.—In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed.[150]]

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) GENERAL RULE.—A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural [151] cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural [152] cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election[153]—

(i) [154] may not be distributable to participants or other beneficiaries earlier than—

(I) separation from service, death, or disability,

(II) an event described in paragraph (10),[155]

(III)[156] in the case of a profit-sharing or stock bonus plan, the attainment of age 59 1/2, or

(IV)[157] in the case of contributions to a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the employee, and

(ii) [158] will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

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[150]P.L. 97-248; §238(b); 96 Stat. 512.
[151]P.L. 100-647, §6071(a), struck out "electric".
[152]See footnote 151.
[153]P.L. 100-647, §1011(k)(2)(A), inserted "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election".
[154]P.L. 100-647, §1011(k)(2)(B), struck out "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election".
[155]P.L. 100-647, §1011(k)(1)(A)(i), amended subclause (II) in its entirety and struck out subclauses (III) and (IV).
[156]P.L. 100-647, §1011(k)(1)(A)(ii), redesignated subclause (V) as subclause (III).
[157]P.L. 100-647, §1011(k)(1)(A)(ii), redesignated subclause (VI) as subclause (IV).
[158]P.L. 100-647, §1011(k)(2)(C), struck out "amounts".

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible[159] highly compensated employees (as defined in paragraph (5)) for such year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible[160] highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible[161] highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible[162] highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subpargraph.

If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D)[163] For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in[164] 401(m)(4)(A)) which meet[165] the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(4) OTHER REQUIREMENTS.—

(A) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit [166] is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply

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[159] P.L. 100-647, §1011(k)(3)(A), inserted "eligible".
[160] See footnote 159.
[161] See footnote 159.
[162] See footnote 159.
[163] P.L. 100-647, §1011(k)(4), redesignated the subparagraph (C) [as added by P.L. 99-514, §1116(e)] as subparagraph (D).
[164] As in original.
[165] P.L. 100-647, §1011(k)(5), struck out "meets" and substituted "meet".
[166] P.L. 100-647, §1011(k)(6), struck out "provided by such employer".

to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural [167] cooperative plan.[168]

(C) COORDINATION WITH OTHER PLANS.—Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) PRE-ERISA MONEY PURCHASE PLAN.—For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) RURAL COOPERATIVE PLAN.—For purposes of this subsection—

(A) IN GENERAL.—The term "rural cooperative plan" means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term "rural cooperative" means—

(i) any organization which—

(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12), and

(iv) an organization which is a national association of organizations described in clause (i), (ii), or (iii).[169]

(8) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED.—

(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) EXCESS CONTRIBUTIONS.—For purposes of subparagraph (A), the term "excess contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

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[167] P.L. 100-647, §6071(b)(2), struck out "rural electric plan" and substituted "rural cooperative plan". Executed as if stricken material read "rural electric cooperative plan".

[168] P.L. 100-647, §1011(k)(9), added this sentence.

[169] P.L. 100-647, §1011(e)(3), amended paragraph (7) in its entirety.
P.L. 100-647, §6071(b)(1), amended paragraph (7) in its entirety.

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS CONTRIBUTIONS.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of the excess contributions attributable to each of such employees.

(D) ADDITIONAL TAX UNDER SECTION 72(t) NOT TO APPLY.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B).[170]

(F)[171] CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.

(9) COMPENSATION.—For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

(10) DISTRIBUTIONS UPON TERMINATION OF PLAN OR DISPOSITION OF ASSETS OR SUBSIDIARY—

(A) IN GENERAL.—The following events are described in this paragraph:

(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

(i) IN GENERAL.—An event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term "lump sum distribution" has the meaning given such term by section 402(e)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof.

(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.[172]

(l) PERMITTED DISPARITY IN PLAN CONTRIBUTIONS OR BENEFITS.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) DEFINED CONTRIBUTION PLAN.—

(A) IN GENERAL.—A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

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[170] P.L. 100-647, §1011(k)(7), added this subparagraph (E).
[171] P.L. 100-647, §1011(k)(7), redesignated subparagraph (E) as subparagraph (F).
[172] P.L. 100-647, §1011(k)(1)(B), added paragraph (10).

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) CONTRIBUTION PERCENTAGES.—For purposes of this paragraph—

(i) EXCESS CONTRIBUTION PERCENTAGE.—The term "excess contribution percentage" means the percentage of compensation which is contributed by the employer[173] under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) BASE CONTRIBUTION PERCENTAGE.—The term "base contribution percentage" means the percentage of compensation contributed by the employer[174] under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) DEFINED BENEFIT PLAN.—A defined benefit plan meets the requirements of this paragraph if—

(A) EXCESS PLANS.—

(i) IN GENERAL.—In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) BENEFIT PERCENTAGES.—For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions[175] rather than contributions.

(B) OFFSET PLANS.—In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) DEFINITIONS RELATING TO PARAGRAPH (3).—For purposes of paragraph (3)—

(A) MAXIMUM EXCESS ALLOWANCE.—The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) MAXIMUM OFFSET ALLOWANCE.—The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 percent of the participant's final average compensation, and

(ii) in the case of total benefits, 3/4 percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) REDUCTIONS.—

(i) IN GENERAL.—The Secretary shall prescribe regulations requiring the reduction of the 3/4 percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

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[173] P.L. 100-647, §1011(g)(1)(A), inserted "by the employer".
[174] See footnote 173.
[175] P.L. 100-647, §1011(g)(1)(B), inserted "attributable to employer contributions".

(ii) BASIS OF REDUCTIONS.—Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) OFFSET PLAN.—The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) INTEGRATION LEVEL.—

(i) IN GENERAL.—The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) LIMITATION.—The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) LEVEL TO APPLY TO ALL PARTICIPANTS.—A plan's integration level shall apply with respect to all participants in the plan.

(iv) MULTIPLE INTEGRATION LEVELS.—Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) COMPENSATION.—The term "compensation" has the meaning given such term by section 414(s).

(C) AVERAGE ANNUAL COMPENSATION.—The term "average annual compensation" means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.[176]

(D) FINAL AVERAGE COMPENSATION.—

(i) IN GENERAL.—The term "final average compensation" means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) LIMITATION.—A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) COVERED COMPENSATION.—

(i) IN GENERAL.—The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age[177].

(ii) COMPUTATION FOR ANY YEAR.—For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age[178] shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age[178].

(iii) SOCIAL SECURITY RETIREMENT AGE.—For purposes of this subparagraph, the term "social security retirement age" has the meaning given such term by section 415(b)(8).[180]

(F) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

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[176]P.L. 100-647, §1011(g)(2), amended subparagraph (C) in its entirety.
[177]P.L. 100-647, §1011(g)(3)(A), struck out "age 65" and substituted "the social security retirement age".
[178]See footnote 177.
[179]See footnote 177.
[180]P.L. 100-647, §1011(g)(3)(B), added clause (iii).

(6) SPECIAL RULE FOR PLAN MAINTAINED BY RAILROADS.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) IN GENERAL.—A defined contribution[181] plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) REQUIREMENTS.—

(A) CONTRIBUTION PERCENTAGE REQUIREMENT.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees, or such percentage for all other eligible employees plus 2 percentage points.

(B) MULTIPLE PLANS TREATED AS A SINGLE PLAN.—If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies[182] are made, all such contributions shall be aggregated for purposes of this subsection.

(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year.[183]

(4) DEFINITIONS.—For purposes of this subsection—

(A) MATCHING CONTRIBUTION.—The term "matching contribution" means—

(i) any employer contribution made to a defined contribution[184] plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution[185] plan on behalf of an employee on account of an employee's elective deferral.

(B) ELECTIVE DEFERRAL.—The term "elective deferral" means any employer contribution described in section 402(g)(3)[186].

(C) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) EMPLOYEES TAKEN INTO CONSIDERATION.—

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[181] P.L. 100-647, §1011(l)(1), inserted "defined contribution".
[182] P.L. 100-647, §1011(l)(3), struck out "such contributions" and substituted "contributions to which this subsection applies".
[183] P.L. 100-647, §1011(l)(2), added this sentence.
[184] P.L. 100-647, §1011(l)(4), struck out "the" and substituted "a defined contribution".
[185] See footnote 184.
[186] P.L. 100-647, §1011(l)(5)(A), struck out "(A)".

(A) IN GENERAL.—Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) CERTAIN NONPARTICIPANTS.—If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(6) PLAN NOT DISQUALIFIED IF EXCESS AGGREGATE CONTRIBUTIONS DISTRIBUTED BEFORE END OF FOLLOWING PLAN YEAR.—

(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS AGGREGATE[187] CONTRIBUTIONS.—Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) COORDINATION WITH SUBSECTION (k) AND 402(g).—The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) TREATMENT OF DISTRIBUTIONS.—

(A) ADDITIONAL TAX OF SECTION 72(t) NOT APPLICABLE.—No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6)[188].

(B) EXCLUSION OF EMPLOYEE CONTRIBUTIONS.—Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term "alternative limitation" means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.

(10) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.

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[187] P.L. 100-647, §1011(l)(6), inserted "AGGREGATE".
[188] P.L. 100-647, §1011(l)(7), struck out "(8)" and substituted "(6)".

(n) COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) CROSS REFERENCE.—For exemption from tax of a trust qualified under this section, see section 501(a).

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

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(8) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

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SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) DISTRIBUTEE TAXABLE UNDER SECTION 72.—If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

[(2) Repealed.[189]]

(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(b) Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—

(1) General Rule.—If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,[190]

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12)[191], and[192]

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[189] P.L. 99-514, §1122(b)(1)(B); 100 Stat. 2466.
[190] P.L. 100-647, §1011(c)(7)(B), struck out "and".
[191] P.L. 100-647, §1011(m)(1)(B), struck out "(10)" and substituted "(12)".
[192] P.L. 100-647, §1011(c)(7)(B), inserted "and".

(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),[189] then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii) shall not be considered contributed by such employer.

(2) Exclusion allowance.—

(A) In general.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

(B) Election to have allowance determined under section 415 rules.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

(C) NUMBER OF YEARS OF SERVICE FOR DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTERS OR LAY EMPLOYEES.—For purposes of this subsection and section 415(c)(4)(A)—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

(D) ALTERNATIVE EXCLUSION ALLOWANCE.—

(i) IN GENERAL.—In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of—

(I) $3,000, or

(II) the includible compensation of such individual.

(ii) SUBPARAGRAPH NOT TO APPLY TO INDIVIDUALS WITH ADJUSTED GROSS INCOME OVER $17,000.—This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds $17,000.

(iii) SPECIAL RULE FOR FOREIGN MISSIONARIES.—In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.

[189] P.L. 100-647, §1011(c)(7)(B), added subparagraph (E).

(3) Includible compensation.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) Years of service.—In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract.—If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable.—For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(7) Custodial accounts for regulated investment company stock.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

(B) Account treated as plan.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company.—For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) SPECIAL RULES FOR PARTIAL DISTRIBUTIONS.—

(i) IN GENERAL.—In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

(ii) TOTAL DISTRIBUTION.—For purposes of subparagraph (A), the term "total distribution" means one or more distributions from an annuity

contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(C) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B), (C), and (F)(i) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(D) REQUIRED DISTRIBUTIONS NOT ELIGIBLE FOR ROLLOVER TREATMENT.—Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under paragraph (10).

(9) RETIREMENT INCOME ACCOUNTS PROVIDED BY CHURCHES, ETC.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) RETIREMENT INCOME ACCOUNT.—For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) DISTRIBUTION REQUIREMENTS.—Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of section 401(a)(9) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account).

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59 1/2, SEPARATION FROM SERVICE, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59 1/2, separates from service, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

(B) in the case of hardship.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12)[194] NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17),[195] and (26) of section 401(a), section 401(m),[196] and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.[197] For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section

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[194] P.L. 100-647, §1011(m)(1)(A), redesignated paragraph (10) [as added by P.L. 99-514, §1120(b)] as paragraph (12).
[195] P.L. 100-647, §1011(m)(2)(A), inserted "(17),".
[196] P.L. 100-647, §1011(m)(2)(B), inserted ", section 401(m),".
[197] P.L. 100-647, §1011(c)(12), added this sentence.

410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.[199]

(B) CHURCH.—For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

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SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

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(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

(1) IN GENERAL.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) PARTICIPATION REQUIREMENTS.—This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $300 in compensation (within the meaning of section 414(q)(7)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) CONTRIBUTIONS MAY NOT DISCRIMINATE IN FAVOR OF THE HIGHLY COMPENSATED, ETC.—

(A) IN GENERAL.—The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) SPECIAL RULES.—For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).[199]

(C) CONTRIBUTIONS MUST BEAR UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the [200] compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) PERMITTED DISPARITY.—For purposes of subparagraph (C), the rules of section 401(l)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) WITHDRAWALS MUST BE PERMITTED.—A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) CONTRIBUTIONS MUST BE MADE UNDER WRITTEN ALLOCATION FORMULA.—The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

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[199] P.L. 100-647, §6052(a)(1), amended this sentence in its entirety.
[199] P.L. 100-647, §1011(i)(5), amended subparagraph (B) in its entirety.
[200] P.L. 100-647, §1011(f)(3)(C), struck out "total".

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

(A) ARRANGEMENTS WHICH QUALIFY.—

(i) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 PERCENT OF ELIGIBLE EMPLOYEES MUST ELECT.—Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) REQUIREMENTS RELATING TO DEFERRAL PERCENTAGE.—Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.[201]

(iv) LIMITATIONS ON ELECTIVE DEFERRALS.—Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.[202]

(B) EXCEPTION WHERE MORE THAN 25 EMPLOYEES.—This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)[203] at any time during the preceding year.

(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS.—

(i) IN GENERAL.—Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) EXCESS CONTRIBUTION.—For purposes of clause (i), the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000)[204] for the year.

(E) EXCEPTION FOR STATE AND LOCAL AND TAX-EXEMPT PENSIONS.—This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) EXCEPTION WHERE PENSION DOES NOT MEET REQUIREMENTS NECESSARY TO INSURE DISTRIBUTION OF EXCESS CONTRIBUTIONS.—This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn

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[201] P.L. 100-647, §1011(f)(1), amended subparagraph (A) in its entirety.

[202] P.L. 100-647, §1011(c)(7)(C), added clause (iv).

[203] P.L. 100-647, §1011(f)(2), inserted "who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)".

[204] P.L. 100-647, §1011(f)(3)(A), struck out "(within the meaning of section 414(s))" and substituted "(not in excess of the first $200,000)".

from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.[205]

(G)[206] HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

(7) DEFINITIONS.—For purposes of this subsection and subsection (l)—

(A) EMPLOYEE, EMPLOYER, OR OWNER-EMPLOYEE.—The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c).

(B) COMPENSATION.—Except as provided in paragraph (2)(C), the term "compensation" has the meaning given such term by section 414(s).[207]

(C) YEAR.—The term "year" means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii)[208] at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)[209].

(9) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

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(h) * * *

(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

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SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) EXEMPTION FROM TAXATION.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) TAX ON UNRELATED BUSINESS INCOME AND CERTAIN OTHER ACTIVITIES.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) Any[210] corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

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[205] P.L. 100-647, §1011(f)(4), added this subparagraph (F).
[206] P.L. 100-647, §1011(f)(4), redesignated subparagraph (F) as subparagraph (G).
[207] P.L. 100-647, §1011(f)(3)(B), amended subparagraph (B) in its entirety.
[208] P.L. 100-647, §1011(f)(3)(D), struck out "paragraph (3)(C)" and substituted "paragraphs (3)(C) and (6)(D)(ii)".
[209] P.L. 100-647, §1011(f)(10), inserted ", except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)".
[210] P.L. 100-647, §1018(v)(15), struck out "any" and substituted "Any".

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to)[211] any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,[212]

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or[213]

(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).[214]

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

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[211] P.L. 100-203, §10711(a)(2), inserted "(or in opposition to)".
[212] P.L. 100-647, §2003(a)(1), struck out "or".
[213] P.L. 100-647, §2003(a)(1), struck out the period and substituted ", or".
[214] P.L. 100-647, §2003(a)(1), added clause (iv).

(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).[215]

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)[216]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the

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[215] P.L. 100-647, §2003(a)(2), amended subparagraph (C) in its entirety.
[216] As in original. No punctuation.

corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,[217]

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof), and[218]

(iv) the requirements of section 401(a)(30) are met.[219]

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an[220] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

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[217] P.L. 100-647, §1011(c)(7)(D), struck out "and".
[218] P.L. 100-647, §1011(c)(7)(D), struck out the period and substituted ", and".
[219] P.L. 100-647, §1011(c)(7)(D), added clause (iv).
[220] As in original. Should be "An".

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any[221] association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.[222]

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or[223]

(iv) any organization described in paragraph (3).[224]

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits[225] its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

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[221] P.L. 100-647, §1018(v)(14), struck out "any" and substituted "Any".
[222] P.L. 100-647, §1016(a)(1)(A), added this sentence.
[223] P.L. 100-647, §1016(a)(3)(B), inserted "or".
[224] P.L. 100-647, §1016(a)(3)(B), struck out ", or" and substituted a period.
P.L. 100-647, §1016(a)(3)(B), struck out clause (v).
[225] P.L. 100-647, §1016(a)(2), struck out "described in this paragraph must permit" and substituted "shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits".

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.[226]

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.[227]

(d) RELIGIOUS AND APOSTOLIC ORGANIZATIONS.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis)[228], warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8 1/2 months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) COOPERATIVE SERVICE ORGANIZATIONS OF OPERATING EDUCATIONAL ORGANIZATIONS.—For purposes of this title, if an organization is—

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[226] P.L. 100-647, §1016(a)(3)(A), added subparagraph (E).
[227] P.L. 100-647, §1016(a)(4), added subparagraph (F).
[228] P.L. 100-647, §6202(a), inserted "(including the purchasing of insurance on a group basis)".

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) DEFINITION OF AGRICULTURAL.—For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) EXPENDITURES BY PUBLIC CHARITIES TO INFLUENCE LEGISLATION.—

(1) GENERAL RULE.—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) DEFINITIONS.—For purposes of this subsection—

(A) LOBBYING EXPENDITURES.—The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) LOBBYING CEILING AMOUNT.—The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) GRASS ROOTS EXPENDITURES.—The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) GRASS ROOTS CEILING AMOUNT.—The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) ORGANIZATIONS TO WHICH THIS SUBSECTION APPLIES.—This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) ORGANIZATIONS PERMITTED TO ELECT TO HAVE THIS SUBSECTION APPLY.—An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) DISQUALIFIED ORGANIZATIONS.—For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) YEARS FOR WHICH ELECTION IS EFFECTIVE.—An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) NO EFFECT ON CERTAIN ORGANIZATIONS.—With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization, nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) AFFILIATED ORGANIZATIONS.—For rules regarding affiliated organizations, see section 4911(f).

(i) PROHIBITION OF DISCRIMINATION BY CERTAIN SOCIAL CLUBS.—Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) SPECIAL RULES FOR CERTAIN AMATEUR SPORTS ORGANIZATIONS.—

(1) IN GENERAL.—In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) QUALIFIED AMATEUR SPORTS ORGANIZATION DEFINED.—For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) TREATMENT OF CERTAIN ORGANIZATIONS PROVIDING CHILD CARE.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.[229]

(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(m) CERTAIN ORGANIZATIONS PROVIDING COMMERCIAL-TYPE INSURANCE NOT EXEMPT FROM TAX.—

(1) DENIAL OF TAX EXEMPTION WHERE PROVIDING COMMERCIAL-TYPE INSURANCE IS SUBSTANTIAL PART OF ACTIVITIES.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) OTHER ORGANIZATIONS TAXED AS INSURANCE COMPANIES ON INSURANCE BUSINESS.—In the case of an organization described in paragraph (3) or (4) of

[229]Alignment as in original.

subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) COMMERCIAL-TYPE INSURANCE.—For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,[230]

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and[231]

(E) charitable gift annuities.[232]

(4) INSURANCE INCLUDES ANNUITIES.—For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) CHARITABLE GIFT ANNUITY.—For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).[233]

(n) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

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SEC. 509. PRIVATE FOUNDATION DEFINED.

(a) GENERAL RULE.—For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

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[230] P.L. 100-647, §1010(b)(4)(A), struck out "and".
[231] P.L. 100-647, §1010(b)(4)(A), struck out the period and substituted ", and".
[232] P.L. 100-647, §1010(b)(4)(A), added subparagraph (E).
[233] P.L. 100-647, §1010(b)(4)(B), added paragraph (5).

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

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SEC. 513. UNRELATED TRADE OR BUSINESS.

(a) GENERAL RULE.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

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SEC. 631. GAIN OR LOSS IN THE CASE OF TIMBER, COAL, OR DOMESTIC IRON ORE.

(a) ELECTION TO CONSIDER CUTTING AS SALE OR EXCHANGE.—If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right on the first day of such year and for a period of more than 6 months before such cutting) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) DISPOSAL OF TIMBER WITH A RETAINED ECONOMIC INTEREST.—In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In

determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) DISPOSAL OF COAL OR DOMESTIC IRON ORE WITH A RETAINED ECONOMIC INTEREST.—In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

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SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) GENERAL RULE.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 6 months,

(2) gains and losses from sales or exchanges of capital assets held for more than 6 months,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which there is a deduction under part VIII of subchapter B,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

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SEC. 707. TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP.

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(c) GUARANTEED PAYMENTS.—To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

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SEC. 761. TERMS DEFINED.

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(a) PARTNERSHIP.—For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) PARTNER.—For purposes of this subtitle, the term "partner" means a member of a partnership.

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SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) GROSS INCOME FROM SOURCES WITHIN UNITED STATES.—The following items of gross income shall be treated as income from sources within the United States:

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(8) SOCIAL SECURITY BENEFITS.—Any social security benefit (as defined in section 86(d)).

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SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) INCOME NOT CONNECTED WITH UNITED STATES BUSINESS—30 PERCENT TAX.

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(3) TAXATION OF SOCIAL SECURITY BENEFITS.—For purposes of this section and section 1441—

(A) one-half of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).

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SEC. 911. CITIZENS OR RESIDENTS OF THE UNITED STATES LIVING ABROAD.

(a) EXCLUSION FROM GROSS INCOME.—At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) FOREIGN EARNED INCOME.—

(1) DEFINITION.—For purposes of this section—

(A) IN GENERAL.—The term "foreign earned income" with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) CERTAIN AMOUNTS NOT INCLUDED IN FOREIGN EARNED INCOME.—The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) LIMITATION ON FOREIGN EARNED INCOME.—

(A) IN GENERAL.—The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate of $70,000.

(B) ATTRIBUTION TO YEAR IN WHICH SERVICES ARE PERFORMED.—For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) TREATMENT OF COMMUNITY INCOME.—In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(c) HOUSING COST AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year, over

(B) an amount equal to the product of—

(i) 16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS-14, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) HOUSING EXPENSES.—

(A) IN GENERAL.—The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) SECOND FOREIGN HOUSEHOLD.—

(i) IN GENERAL.—Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) SEPARATE HOUSEHOLD FOR SPOUSE AND DEPENDENTS.—If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(3) SPECIAL RULES WHERE HOUSING EXPENSES NOT PROVIDED BY EMPLOYER.—

(A) IN GENERAL.—To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) LIMITATION.—For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-YEAR CARRYOVER OF HOUSING AMOUNTS NOT ALLOWED BY REASON OF SUBPARAGRAPH (B).—

(i) IN GENERAL.—The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) LIMITATION.—For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) EMPLOYER PROVIDED AMOUNTS.—For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) FOREIGN EARNED INCOME.—For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED INDIVIDUAL.—The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) TAXPAYER ENGAGED IN TRADE OR BUSINESS.—In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) TAX HOME.—The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) WAIVER OF PERIOD OF STAY IN FOREIGN COUNTRY.—Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A) and (c)(1)(B)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) TEST OF BONA FIDE RESIDENCE.—If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) DENIAL OF DOUBLE BENEFITS.—No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) AGGREGATE BENEFIT CANNOT EXCEED FOREIGN EARNED INCOME.—The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) LIMITATION ON INCOME EARNED IN RESTRICTED COUNTRY.—

(A) IN GENERAL.—If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term "foreign earned income" shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term "housing expenses" shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) REGULATIONS.—For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) EXCEPTION.—Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) ELECTION.—

(1) IN GENERAL.—An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) REVOCATION.—A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) CROSS REFERENCES.—

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

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SEC. 931. INCOME FROM SOURCES WITHIN GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.

(a) GENERAL RULE.—In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) DEDUCTIONS, ETC. ALLOCABLE TO EXCLUDED AMOUNTS NOT ALLOWABLE.—An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) SPECIFIED POSSESSION.—For purposes of this section, the term "specified possession" means Guam, American Samoa, and the Northern Mariana Islands.

(d) SPECIAL RULES.—For purposes of this section—

(1) EMPLOYEES OF THE UNITED STATES.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(2) DETERMINATION OF SOURCE, ETC.—The determination as to whether income is described in paragraph (1) or (2) of subsection (a) shall be made under regulations prescribed by the Secretary.

(3) DETERMINATION OF RESIDENCY.—For purposes of this section and section 876, the determination of whether an individual is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands shall be made under regulations prescribed by the Secretary.

SEC. 932. COORDINATION OF UNITED STATES AND VIRGIN ISLANDS INCOME TAXES.

(a) TREATMENT OF UNITED STATES RESIDENTS.—

(1) APPLICATION OF SUBSECTION.—This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands at the close of the taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) FILING REQUIREMENT.—Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

(3) EXTENT OF INCOME TAX LIABILITY.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) PORTION OF UNITED STATES TAX LIABILITY PAYABLE TO THE VIRGIN ISLANDS.—

(1) IN GENERAL.—Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) APPLICABLE PERCENTAGE.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "applicable percentage" means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) VIRGIN ISLANDS ADJUSTED GROSS INCOME.—For purposes of subparagraph (A), the term "Virgin Islands adjusted gross income" means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) AMOUNTS PAID ALLOWED AS CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) TREATMENT OF VIRGIN ISLANDS RESIDENTS.—

(1) APPLICATION OF SUBSECTION.—This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands at the close of the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) FILING REQUIREMENT.—Each individual to whom this subsection applies for the taxable year shall file an[234] income tax return for the taxable year with the Virgin Islands.

(3) EXTENT OF INCOME TAX LIABILITY.—In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

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[234] P.L. 100-647, §1012(w)(3), struck out "his" and substituted "an".

(4) RESIDENTS OF THE VIRGIN ISLANDS.—In the case of an individual—

(A) who is a bona fide resident of the Virgin Islands at the close of the taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.[235]

(d) SPECIAL RULE FOR JOINT RETURNS.—In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) SPECIAL RULE FOR APPLYING SECTION TO TAX IMPOSED IN VIRGIN ISLANDS.—In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a).[236]

SEC. 933. INCOME FROM SOURCES WITHIN PUERTO RICO.

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year. In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico. In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

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SEC. 1221. CAPITAL ASSET DEFINED.

For purposes of this subtitle, the term "capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

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[235] P.L. 100-647, §1012(w)(2), amended paragraph (4) in its entirety.
[236] P.L. 100-647, §1012(w)(1), amended subsection (e) in its entirety.

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A).

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SEC. 1231. PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.

(a) GENERAL RULE.—

(1) GAINS EXCEED LOSSES.—If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) GAINS DO NOT EXCEED LOSSES.—If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) SECTION 1231 GAINS AND LOSSES.—For purposes of this subsection—

(A) SECTION 1231 GAIN.—The term "section 1231 gain" means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 6 months and is held in connection with a trade or business or a transaction entered into for profit.

(B) SECTION 1231 LOSS.—The term "section 1231 loss" means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) SPECIAL RULES.—For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 6 months and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 6 months and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) DEFINITION OF PROPERTY USED IN THE TRADE OR BUSINESS.—For purposes of this section—

(1) GENERAL RULE.—The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months,

and real property used in the trade or business, held for more than 6 months, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221, or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221.

(2) TIMBER, COAL, OR DOMESTIC IRON ORE.—Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) LIVESTOCK.—Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) UNHARVESTED CROP.—In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(c) RECAPTURE OF NET ORDINARY LOSSES.—

(1) IN GENERAL.—The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) NON-RECAPTURED NET SECTION 1231 LOSSES.—For purposes of this subsection, the term "non-recaptured net section 1231 losses" means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) NET SECTION 1231 GAIN.—For purposes of this subsection, the term "net section 1231 gain" means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

(4) NET SECTION 1231 LOSS.—For purposes of this subsection, the term "net section 1231 loss" means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

(5) SPECIAL RULES.—For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.

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SEC. 1256. SECTION 1256 CONTRACTS MARKED TO MARKET.

(a) GENERAL RULE.—For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) SECTION 1256 CONTRACT DEFINED.—For purposes of this section, the term "section 1256 contract" means—

(1) any regulated futures contract,

(2) any foreign currency contract,

(3) any nonequity option, and

(4) any dealer equity option.

(c) TERMINATIONS, ETC.—

(1) IN GENERAL.—The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) SPECIAL RULE WHERE TAXPAYER TAKES DELIVERY ON OR EXERCISES PART OF STRADDLE.—If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) FAIR MARKET VALUE TAKEN INTO ACCOUNT.—For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) ELECTIONS WITH RESPECT TO MIXED STRADDLES.—

(1) ELECTION.—The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) TIME AND MANNER.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) MIXED STRADDLE.—For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) MARK TO MARKET NOT TO APPLY TO HEDGING TRANSACTIONS.—

(1) SECTION NOT TO APPLY.—Subsection (a) shall not apply in the case of a hedging transaction.

(2) DEFINITION OF HEDGING TRANSACTION.—For purposes of this subsection, the term "hedging transaction" means any transaction if—

(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

(B) the gain or loss on such transactions is treated as ordinary income or loss, and

(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) SPECIAL RULE FOR SYNDICATES.—

(A) IN GENERAL.—Notwithstanding paragraph (2), the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.

(B) SYNDICATE DEFINED.—For purposes of subparagraph (A), the term "syndicate" means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) HOLDINGS ATTRIBUTABLE TO ACTIVE MANAGEMENT.—For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax-avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) LIMITATION ON LOSSES FROM HEDGING TRANSACTIONS.—

(A) IN GENERAL.—

(i) LIMITATION.—Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) CARRYOVER OF DISALLOWED LOSS.—Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) EXCEPTION WHERE ECONOMIC LOSS.—Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) HEDGING LOSS.—The term "hedging loss" means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) UNRECOGNIZED GAIN.—The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).

(f) SPECIAL RULES.—

(1) DENIAL OF CAPITAL GAINS TREATMENT FOR PROPERTY IDENTIFIED AS PART OF A HEDGING TRANSACTION.—For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2)(C) by the taxpayer as being part of a hedging transaction.

(2) SUBSECTION (a)(3) NOT TO APPLY TO ORDINARY INCOME PROPERTY.—Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) CAPITAL GAIN TREATMENT FOR TRADERS IN SECTION 1256 CONTRACTS.—

(A) IN GENERAL.—For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) TREATMENT OF UNDERLYING PROP
whether gain or loss with respect to any
the fact that the taxpayer is actively eng
1256 contracts related to such property sh

(4) SPECIAL RULE FOR DEALER EQUITY OPTIO
ENTREPRENEURS.—In the case of any gain o
options which are allocable to limited partn
the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) sha
and

(B) all such gains or losses shall be t
losses, as the case may be.

(g) DEFINITIONS.—For purposes of this section—

(1) REGULATED FUTURES CONTRACTS DEFI
contract" means a contract—

(A) with respect to which the amou
amount which may be withdrawn depen
and

(B) which is traded on or subject t
exchange.

(2) FOREIGN CURRENCY CONTRACT DEFINED.—

(A) FOREIGN CURRENCY CONTRACT.—T
means a contract—

(i) which requires delivery of, or th
value of, a foreign currency which
also traded through regulated future

(ii) which is traded in the interban

(iii) which is entered into at arm
reference to the price in the interban

(B) REGULATIONS.—The Secretary shal
be necessary or appropriate to carry ou
including regulations excluding from the
contract (or type of contract) if its appli
with such purposes.

(3) NONEQUITY OPTION.—The term "nonequ
which is not an equity option.

(4) DEALER EQUITY OPTION.—The term "
respect to an options dealer, any listed option

(A) is an equity option,

(B) is purchased or granted by such o
his activity of dealing in options, and

(C) is listed on the qualified board or e
is registered.

(5) LISTED OPTION.—The term "listed opti
right to acquire stock from the issuer) whic
of) a qualified board or exchange.

(6) EQUITY OPTION.—

(A) IN GENERAL.—Except as provided i
option" means any option—

(i) to buy or sell stock, or

(ii) the value of which is determin
to any stock (or group of stocks) or st

(B) EXCEPTION FOR CERTAIN OPTIONS
TRADING COMMISSION.—The term "equity
with respect to any group of stocks or sto

(i) there is in effect a designation
Commission of a contract market f
stocks or index, or

(ii) the Secretary determines that
of law for such a designation.

(7) QUALIFIED BOARD OR EXCHANGE.—The
means—

(A) a national securities exchange wh
and Exchange Commission,

(B) a domestic board of trade desig
Commodity Futures Trading Commissio

(C) any other exchange, board of trade
determines has rules adequate to carry o

(8) OPTIONS DEALER.—

[illegible]

SEC. 5000. CERTAIN LARGE GROUP HEALTH PLANS.

(a) IMPOSITION OF TAX.—There is hereby imposed on any employer or employee organization that contributes to a nonconforming large group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each large group health plan to which the employer or employee organization contributes.

(b) LARGE GROUP HEALTH PLAN.—For purposes of this section, the term "large group health plan" means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.

(c) NONCONFORMING LARGE GROUP HEALTH PLAN.—For purposes of this section, the term "nonconforming large group health plan" means a large group health plan that at any time during a calendar year does not comply with the requirements of section 1862(b)(1)(A)(v) of the Social Security Act.

(d) GOVERNMENT ENTITIES.—For purposes of this section, the term "employer" does not include a Federal or other governmental entity.

[illegible]

SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to[*] the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) IDENTIFICATION OF TAXPAYER.—The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) RETURNS, ETC., OF DISCS AND FORMER DISCS AND FSCS AND FORMER FSCS.—

(1) RECORDS AND INFORMATION.—A DISC or former DISC or a FSC or former FSC shall for the taxable year—

[*] P.L. 98-67, §101(g)(1), struck out "for" and substituted "with respect to".

(A) through such information to persons who were shareholders at any time during the taxable year and to the Secretary, and

(B) such returns, as may be required by regulations prescribed by the Secretary.

(3) RETURNS.—A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) AUTHORITY TO REQUIRE INFORMATION CONCERNING SECTION 912 ALLOWANCES.—The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) REGULATIONS REQUIRING RETURNS ON MAGNETIC TAPE, ETC.—

(1) IN GENERAL.—The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. In prescribing such regulations, the Secretary shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with such a filing requirement.

(2) CERTAIN RETURNS MUST BE FILED ON MAGNETIC MEDIA.—

(A) IN GENERAL.—In the case of any person who is required to file returns under sections 6042(a), 6044(a), and 6049(a) with respect to more than 50 payees for any calendar year, all returns under such sections shall be on magnetic media.

(B) HARDSHIP EXCEPTION.—Subparagraph (A) shall not apply to any person for any period if such person establishes to the satisfaction of the Secretary that its application to such person for such period would result in undue hardship.

(f) INCOME, ESTATE, AND GIFT TAXES.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and

[illegible]

SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT OF STATEMENT.—Every person who makes payments of unemployment compensation aggregating $10 or more to any individual during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amounts of such payments and the name and address of the individual to whom paid.

(b) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the name and address of the person required to make such return, and

(2) the aggregate amount of payments to the individual required to be shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(c) DEFINITIONS.—For purposes of this section—

(1) UNEMPLOYMENT COMPENSATION.—The term "unemployment compensation" has the meaning given to such term by section 85(c).

(2) PERSON.—The term "person" means the officer or employee having control of the payment of the unemployment compensation, or the person appropriately designated for purposes of this section.

[illegible]

SEC. 6051. RECEIPTS FOR EMPLOYEES.

[redacted] such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) the total amount of wages as defined in section 3401(a),

(4) the total amount deducted and withheld as tax under section 3402,

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101,

(7) the total amount paid to the employee under section 3507 (relating to advance payment of earned income credit),[328]

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457, and[328]

(9) the total amount incurred for dependent care assistance with respect to such employee under a dependent care assistance program described in section 129(d).[329]

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (3), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(4). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(5). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(6). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(7). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(8). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(9). In the case of [redacted] the amount required to be shown by paragraph (3) [redacted] the amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(10). In lieu of the amount required to be shown by paragraph (3), such statement shall show the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) Additional Requirements.—The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

(d) Statements To Constitute Information Returns.—A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary shall, when required by such regulations, be filed with the Secretary.

(e) Railroad Employers.—

(1) Additional requirement.—Every person required to deduct and withhold tax under section 3201 from an employee shall include on or with the statement required to be furnished such employee under subsection (a) a notice concerning the provisions of this title with respect to the allowance of a creditor refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on wages imposed by section 3101(b).

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[328] P.L. 100-647, §1011(c)(33), inserted a comma.
[328] P.L. 100-647, §1011(c)(32)(B), struck out the period and substituted ", and".
[329] P.L. 100-647, §1011(c)(32)(B), added paragraph (9).

(2) INFORMATION TO BE SUPPLIED TO EMPLOYEES.—Each person required to deduct and withhold tax under section 3201 during any year from an employee who has also received wages during such year subject to the tax imposed by section 3101(b) shall, upon request of such employee, furnish to him a written statement showing—

(A) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted,

(B) the total amount deducted as tax under section 3201, and

(C) the portion of the total amount deducted as tax under section 3201 which is for financing the cost of hospital insurance under part A of title XVIII of the Social Security Act.

(f) STATEMENTS REQUIRED IN CASE OF SICK PAY PAID BY THIRD PARTIES.—

(1) STATEMENTS REQUIRED FROM PAYOR.—

(A) IN GENERAL.—If, during any calendar year, any person makes a payment of third-party sick pay to an employee, such person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom such payment was made showing—

(i) the name and, if there is withholding under section 3402(o), the social security number of such employee,

(ii) the total amount of the third-party sick pay paid to such employee during the calendar year, and

(iii) the total amount (if any) deducted and withheld from such sick pay under section 3402.

For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay (as defined in section 3402(o)(2)(C)) which does not constitute wages for purposes of chapter 24 (determined without regard to section 3402(o)(1)).

(B) SPECIAL RULES.—

(i) STATEMENTS ARE IN LIEU OF OTHER REPORTING REQUIREMENTS.—The reporting requirements of subparagraph (A) with respect to any payments shall, with respect to such payments, be in lieu of the requirements of subsection (a) and of section 6041.

(ii) PENALTIES MADE APPLICABLE.—For purposes of sections 6674 and 7204, the statements required to be furnished by subparagraph (A) shall be treated as statements required under this section to be furnished to employees.

(2) INFORMATION REQUIRED TO BE FURNISHED BY EMPLOYER.—Every employer who receives a statement under paragraph (1)(A) with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to such employee showing—

(A) the information shown on the statement furnished under paragraph (1)(A), and

(B) if any portion of the sick pay is excludable from gross income under section 104(a)(3), the portion which is not so excludable and the portion which is so excludable.

To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement (if any) required under subsection (a).

SEC. 6052. RETURNS REGARDING PAYMENT OF WAGES IN THE FORM OF GROUP-TERM LIFE INSURANCE.

(a) REQUIREMENT OF REPORTING.—Every employer who during any calendar year provides group-term life insurance on the life of an employee during part or all of such calendar year under a policy (or policies) carried directly or indirectly by such employer shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the cost of such insurance and the name and address of the employee on whose life such insurance is provided, but only to the extent that the cost of such insurance is includible in the employee's gross income under section 79(a). For purposes of this section, the extent to which the cost of group-term life insurance is includible in the employee's gross income under section 79(a) shall be determined as if the employer were the only employer paying such employee remuneration in the form of such insurance.

(b) STATEMENTS TO BE FURNISHED TO EMPLOYEES WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every employer required to make a return under subsection (a) shall furnish to each employee whose name is required to be set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

SEC. 6053. REPORTING OF TIPS.

(a) REPORTS BY EMPLOYEES.—Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary.

(b) STATEMENTS FURNISHED BY EMPLOYERS.—If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary.

(c) REPORTING REQUIREMENTS RELATING TO CERTAIN LARGE FOOD OR BEVERAGE ESTABLISHMENTS.—

(1) REPORT TO SECRETARY.—In the case of a large food or beverage establishment, each employer shall report to the Secretary, at such time and manner as the Secretary may prescribe by regulation, the following information with respect to each calendar year:

(A) The gross receipts of such establishment from the provision of food and beverages (other than nonallocable receipts).

(B) The aggregate amount of charge receipts (other than nonallocable receipts).

(C) The aggregate amount of charged tips shown on such charge receipts.

(D) The sum of—

(i) the aggregate amount reported by employees to the employer under subsection (a), plus

(ii) the amount the employer is required to report under section 6051 with respect to service charges of less than 10 percent.

(E) With respect to each employee, the amount allocated to such employee under paragraph (3).

(2) FURNISHING OF STATEMENT TO EMPLOYEES.—Each employer described in paragraph (1) shall furnish, in such manner as the Secretary may prescribe by regulations, to each employee of the large food or beverage establishment a written statement for each calendar year showing the following information:

(A) The name and address of such employer.

(B) The name of the employee.

(C) The amount allocated to the employee under paragraph (3) for all payroll periods ending within the calendar year.

Any statement under this paragraph shall be furnished to the employee during January of the calendar year following the calendar year for which such statement is made.

(3) EMPLOYEE ALLOCATION OF 8 PERCENT OF GROSS RECEIPTS.—

(A) IN GENERAL.—For purposes of paragraphs (1)(E) and (2)(C), the employer of a large food or beverage establishment shall allocate (as tips for purposes of the requirements of this subsection) among employees performing services during any payroll period who customarily receive tip income an amount equal to the excess of—

(i) 8 percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) the aggregate amount reported by such employees to the employer under subsection (a) for such period.

(B) METHOD OF ALLOCATION.—The employer shall allocate the amount under subparagraph (A)—

(i) on the basis of a good faith agreement by the employer and the employees, or

(ii) in the absence of an agreement under clause (i), in the manner determined under regulations prescribed by the Secretary.

(C) THE SECRETARY MAY LOWER THE PERCENTAGE REQUIRED TO BE ALLOCATED.—Upon the petition of the employer or the majority of employees of such employer, the Secretary may reduce (but not below 2 percent) the percentage of gross receipts required to be allocated under subparagraph (A) where he determines that the percentage of gross receipts constituting tips is less than 8 percent.

(4) LARGE FOOD OR BEVERAGE ESTABLISHMENT.—For purposes of this subsection, the term "large food or beverage establishment" means any trade or business (or portion thereof)—

(A) which provides food or beverages,

(B) with respect to which the tipping of employees serving food or beverages by customers is customary, and

(C) which normally employed more than 10 employees on a typical business day during the preceding calendar year.

For purposes of subparagraph (C), rules similar to the rules of subsections (a) and (b) of section 52 shall apply under regulations prescribed by the Secretary, and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

(5) EMPLOYER NOT TO BE LIABLE FOR WRONG ALLOCATIONS.—The employer shall not be liable to any person if any amount is improperly allocated under paragraph (3)(B) if such allocation is done in accordance with the regulations prescribed under paragraph (3)(B).

(6) NONALLOCABLE RECEIPTS DEFINED.—For purposes of this subsection, the term "nonallocable receipts" means receipts which are allocable to—

(A) carryout sales, or

(B) services with respect to which a service charge of 10 percent or more is added.

(7) APPLICATION TO NEW BUSINESSES.—The Secretary shall prescribe regulations for the application of this subsection to new businesses.

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SEC. 6057. ANNUAL REGISTRATION, ETC.

(a) ANNUAL REGISTRATION.—

(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary.

(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

(A) the name of the plan,

(B) the name and address of the plan administrator,

(C) the name and taxpayer identifying number of each participant in the plan—

(i) who, during such plan year, separated from the service covered by the plan,

(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

(E) such other information as the Secretary may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary, at such time as may be prescribed by regulations, of—

(1) any change in the name of the plan,

(2) any change in the name or address of the plan administrator,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary, the Secretary may receive from—

(1) any plan to which subsection (a) applies, and

(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE[241].—The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health and Human Services.

(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health and Human Services, may prescribe such regulations as may be necessary to carry out the provisions of this section.

(2) PLANS TO WHICH MORE THAN ONE EMPLOYER CONTRIBUTES.—This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) DEFINITIONS.—For purposes of this section—

(1) RETURN.—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) RETURN INFORMATION.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) TAXPAYER RETURN INFORMATION.—The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

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[241] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

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(6) TAXPAYER IDENTITY.—The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

* * * * * * *

(8) DISCLOSURE.—The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) FEDERAL AGENCY.—The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

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(h) DISCLOSURE TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC.—

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(6) WITHHOLDING OF TAX FROM SOCIAL SECURITY BENEFITS.—Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

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(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.

(1) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO SOCIAL SECURITY ADMINISTRATION AND RAILROAD RETIREMENT BOARD.—The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO THE DEPARTMENT OF LABOR AND PENSION BENEFIT GUARANTY CORPORATION.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) DISCLOSURE THAT APPLICANT FOR FEDERAL LOAN HAS TAX DELINQUENT ACCOUNT.—

(A) IN GENERAL.—Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) RESTRICTION ON DISCLOSURE.—Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

(C) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—For purposes of this paragraph, the term "included Federal loan program" means any program—

(i) under which the United States or a Federal agency makes, guarantees, or insures loans, and

(ii) with respect to which there is in effect a determination by the Director of the Office of Management and Budget (which has been published in the Federal Register) that the application of this paragraph to such program will substantially prevent or reduce future delinquencies under such program.

(4) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN PERSONNEL OR CLAIMANT REPRESENTATIVE MATTERS.—The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code,

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.—Upon written request by the Secretary of Health and Human Services, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

(6) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT OR THE FOOD STAMP ACT OF 1977.—

(A) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) PROGRAMS TO WHICH RULE APPLIES.—The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food Stamp Act of 1977; and

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66).

(8) DISCLOSURE OF CERTAIN RETURN INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO STATE AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) IN GENERAL.—Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

(C) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) DISCLOSURE OF ALCOHOL FUEL PRODUCERS TO ADMINISTRATORS OF STATE ALCOHOL LAWS.—Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

(10) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SECTION 6402(c) OR 6402(d).—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection (c) or (d) of section 6402—

(i) taxpayer identity information with respect to the taxpayer against whom such a reduction was made or not made and with respect to any other person filing a joint return with such taxpayer,

(ii) the fact that a reduction has been made or has not been made under such subsection with respect to such taxpayer,

(iii) the amount of such reduction,

(iv) whether such taxpayer filed a joint return, and

(v) the fact that a payment was made (and the amount of the payment) to the spouse of the taxpayer on the basis of a joint return.

(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection (c) or (d) of section 6402 is

sought for purposes of collecting the debt with respect to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection (c) or (d) of section 6402.[242]

(11)[243] DISCLOSURE OF RETURN INFORMATION TO CARRY OUT FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

(A) IN GENERAL.—The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.

(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

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(6) BLOOD DONOR LOCATOR SERVICE.—

(A) IN GENERAL.—Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator Service in the Department of Health and Human Services.

(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome, in order to inform such donors of the possible need for medical care and treatment.

(C) SAFEGUARDS.—The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.[244]

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(p) PROCEDURE AND RECORDKEEPING.—

(1) MANNER, TIME, AND PLACE OF INSPECTIONS.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

(2) PROCEDURE.—

(A) REPRODUCTION OF RETURNS.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

(B) DISCLOSURE OF RETURN INFORMATION.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

(C) USE OF REPRODUCTIONS.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

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[242] P.L. 100-485, §701(b)(1), amended paragraph (10) in its entirety.
[243] P.L. 100-485, §701(b)(2)(A), struck out paragraph (11) and redesignated paragraph (12) as paragraph (11).
[244] P.L. 100-647, §8008(c)(1), added paragraph (6).

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), (7)(A)(ii), or (8)[245], (k)(1), (2), or (6), (l)(1), (4)(B), (5), (7), (8), (9), (10), or (11)[246], (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

(B) REPORT BY THE SECRETARY.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may, by record vote of a majority of the members of the joint committee, determine.

(C) PUBLIC REPORT ON DISCLOSURES.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), and the General Accounting Office the number of—

(I) requests for disclosure of returns and return information,

(II) instances in which returns and return information were disclosed pursuant to such requests or otherwise,

(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

(ii) describes the general purposes for which such requests were made,[247]

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8)[248], (j)(1) or (2), (l)(1), (2), (3), (5), (10), or (11)[249] or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (8)[250] or (l)(6), (7), (8), or (9) shall, as a condition for receiving returns or return information—

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures

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[245] P.L. 100-690, §7601(b)(2)(A), struck out "or (7)(A)(ii)" and substituted ", (7)(A)(ii), or (8)".
[246] P.L. 100-485, §701(b)(2)(B), struck out "(11), or (12)" and substituted "or (11)".
[247] As in original. Probably should be a period.
[248] P.L. 100-690, §7601(b)(2)(B)(i), struck out "or (5)" and substituted "(5), or (8)".
[249] See footnote 246.
[250] P.L. 100-690, §7601(b)(2)(B)(ii), struck out the comma and substituted "or (8)".

established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentialty of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (1)(6), (7), (8), or (9) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,[251]

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8)[252], (j)(1) or (2), (l)(1), (2), (3), (5), (10), or (11)[253] or (o)(1),,[254] or the General Accounting Office, either—

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and[255]

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable;[256]

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under subsection (m)(2), (4), or (6)[257] and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).[258]

(5) REPORT ON PROCEDURES AND SAFEGUARDS.—After the close of each calendar year, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions and the General Accounting Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

(6) AUDIT OF PROCEDURES AND SAFEGUARDS.—

(A) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

(B) RECORDS OF INSPECTION AND REPORTS BY THE COMPTROLLER GENERAL.—The Comptroller General shall—

(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the General Accounting Office under subsection (i)(7)(A)(ii) and

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[251] P.L. 100-647, §8008(c)(2)(A)(i)(I), struck out "; and" and substituted a comma.
[252] P.L. 100-690, §7601(b)(2)(C), struck out "or (5)" and substituted "(5), or (8)".
[253] See footnote 246.
[254] As in original. One comma should be stricken.
[255] P.L. 100-647, §8008(c)(2)(A)(i)(II), added "and".
[256] P.L. 100-647, §8008(c)(2)(A)(i)(III), added clause (iii).
[257] P.L. 100-647, §8008(c)(2)(A)(ii), struck out "or (4)" and substituted ", (4), or (6)".
[258] P.L. 100-647, §8008(c)(2)(A)(iii), added this sentence.

shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A).

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

(7) ADMINISTRATIVE REVIEW.—The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph.

(8) STATE LAW REQUIREMENTS.—

(A) SAFEGUARDS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

(B) DISCLOSURE OF RETURNS OR RETURN INFORMATION IN STATE RETURNS.—Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

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SEC. 6109. IDENTIFYING NUMBERS.

(a) SUPPLYING OF IDENTIFYING NUMBERS.—When required by regulations prescribed by the Secretary:

(1) INCLUSION IN RETURNS.—Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) FURNISHING NUMBER TO OTHER PERSONS.—Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person or whose identifying number is required to be shown on a return of another person[250] shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) FURNISHING NUMBER OF ANOTHER PERSON.—Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(4) FURNISHING IDENTIFYING NUMBER OF INCOME TAX RETURN PREPARER.—Any return or claim for refund prepared by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. For purposes of this paragraph, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e).

For purposes of this subsection, the identifying number of an individual (or his estate) shall be such individual's social security account number.

(b) LIMITATION.—

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

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[250] P.L. 100-485, §703(c)(3), inserted "or whose identifying number is required to be shown on a return of another person".

(c) REQUIREMENT OF INFORMATION.—For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

(d) USE OF SOCIAL SECURITY ACCOUNT NUMBER.—The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.

(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—If—

(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

(2) such dependent has attained the age of 2[see] years before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent.

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CHAPTER 63—ASSESSMENT

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SEC. 6205. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) ADJUSTMENT OF TAX.—

(1) GENERAL RULE.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) UNITED STATES AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) GUAM OR AMERICAN SAMOA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) DISTRICT OF COLUMBIA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) UNDERPAYMENTS.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

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CHAPTER 64—COLLECTION

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SEC. 6305. COLLECTION OF CERTAIN LIABILITY.

(a) IN GENERAL.—Upon receiving a certification from the Secretary of Health, Education, and Welfare, under section 452(b) of the Social Security Act with respect to

[see] P.L. 100-485, §704(a), struck out "6" and substituted "2".

any individual, the Secretary shall assess and collect the amount certified by the Secretary of Health, Education, and Welfare, in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that—

(1) no interest or penalties shall be assessed or collected,

(2) for such purposes, paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply,

(3) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children, and

(4) in the case of the first assessment against an individual for delinquency under a court or administrative order against such individual for a particular person or persons, the collection shall be stayed for a period of 60 days immediately following notice and demand as described in section 6303.

(b) REVIEW OF ASSESSMENTS AND COLLECTIONS.—No court of the United States, whether established under article I or article III of the Constitution, shall have jurisdiction of any action, whether legal or equitable, brought to restrain or review the assessment and collection of amounts by the Secretary under subsection (a), nor shall any such assessment and collection be subject to review by the Secretary in any proceeding. This subsection does not preclude any legal, equitable, or administrative action against the State by an individual in any State court or before any State agency to determine his liability for any amount assessed against him and collected, or to recover any such amount collected from him, under this section.

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SEC. 6331. LEVY AND DISTRAINT.

(a) AUTHORITY OF SECRETARY.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

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SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) ENUMERATION.—There shall be exempt from levy—

(1) WEARING APPAREL AND SCHOOL BOOKS.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;[261]

(2) FUEL, PROVISIONS, FURNITURE, AND PERSONAL EFFECTS.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $1,650 ($1,550 in the case of levies issued during 1989)[262] in value;[263]

(3) BOOKS AND TOOLS OF A TRADE, BUSINESS, OR PROFESSION.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $1,100 ($1,050 in the case of levies issued during 1989)[264] in value.

(4) UNEMPLOYMENT BENEFITS.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

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[261] As in original. Possibly should be a period.

[262] P.L. 100-647, §6236(c)(1), struck out "$1,500" and substituted "$1,650 ($1,550 in the case of levies issued during 1989)".

[263] See footnote 261.

[264] P.L. 100-647, §6236(c)(2), struck out "$1,000" and substituted "$1,100 ($1,050 in the case of levies issued during 1989)".

(5) UNDELIVERED MAIL.—Mail, addressed to any person, which has not been delivered to the addressee.

(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) WORKMEN'S COMPENSATION.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) JUDGMENTS FOR SUPPORT OF MINOR CHILDREN.—If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) MINIMUM EXEMPTION FOR WAGES, SALARY, AND OTHER INCOME.—Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

(10) CERTAIN SERVICE-CONNECTED DISABILITY PAYMENTS.—Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

(A) subchapter II, III, IV, V,[365], or VI of chapter 11 of such title 38, or[366]

(B)[367] chapter 13, 21, 23,[368] 31, 32, 34, 35, 37, or 39 of such title 38.

(11) CERTAIN PUBLIC ASSISTANCE PAYMENTS.—Any amount payable to an individual as a recipient of public assistance under—

(A) title IV (relating to aid to families with dependent children) or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.[369]

(12) ASSISTANCE UNDER JOB TRAINING PARTNERSHIP ACT.—Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.[370]

(13) PRINCIPAL RESIDENCE EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—Except to the extent provided in subsection (e), the principal residence of the taxpayer (within the meaning of section 1034).[371]

* * * * * * *

(c) NO OTHER PROPERTY EXEMPT.—Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

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CHAPTER 66—ABATEMENTS, CREDITS, AND REFUNDS

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SEC. 6402. AUTHORITY TO MAKE CREDITS OR REFUNDS.

(a) GENERAL RULE.—In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c) and (d)[372], refund any balance to such person.

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[365] P.L. 100-647, §1015(o)(1)(A), struck out "(IV)" and substituted "(III), (IV), (V),".
As in original. One comma should be stricken.
[366] P.L. 100-647, §1015(o)(1)(B), inserted "or".
[367] P.L. 100-647, §1015(o)(3), struck out subparagraph (B) and redesignated subparagraph (C) as subparagraph (B).
[368] P.L. 100-647, §1015(o)(2), struck out "21," and substituted "13, 21, 23,".
[369] P.L. 100-647, §6236(c)(4)(A), added paragraph (11).
[370] P.L. 100-647, §6236(c)(4)(A), added paragraph (12).
[371] P.L. 100-647, §6236(c)(4)(A), added paragraph (13).
[372] P.L. 98-369, §2653(b)(2), struck out "subsection (c)" and substituted "subsections (c) and (d)", applicable to refunds payable after December 31, 1985, and before January 1, 1988.
P.L. 100-203, §9402(e), amended that effective date by striking out "January" and substituting "July".
P.L. 100-485, §701(a), struck out "before July 1, 1988" and substituted "on or before January 10, 1994".

(b) CREDITS AGAINST ESTIMATED TAX.—The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) OFFSET OF PAST-DUE SUPPORT AGAINST OVERPAYMENTS.—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(d) COLLECTION OF DEBTS OWED TO FEDERAL AGENCIES.—

(1) IN GENERAL.—Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than any OASDI overpayment and past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

(2) PRIORITIES FOR OFFSET.—Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) DEFINITIONS.—For purposes of this subsection the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.[273]

(e) REVIEW OF REDUCTIONS.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency to which the amount of such reduction was paid.[274]

(f) FEDERAL AGENCY.—For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).[275]

(g) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment.[276]

(h) CROSS REFERENCE.—For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

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[273]P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 1, 1988.
P.L. 100-203, §9402(a), amended that effective date by striking out "January" and substituting "July".
P.L. 100-485, §701(a), struck out "before July 1, 1988" and substituted "on or before January 10, 1994".
[274]See footnote 273.
[275]See footnote 273.
[276]See footnote 273.

(i) REFUNDS TO CERTAIN FIDUCIARIES OF INSOLVENT MEMBERS OF AFFILIATED GROUPS.—Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.[377]

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SEC. 6413. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) ADJUSTMENT OF TAX.—

(1) GENERAL RULE.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) UNITED STATES AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) GUAM OR AMERICAN SAMOA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) DISTRICT OF COLUMBIA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) OVERPAYMENTS OF CERTAIN EMPLOYMENT TAXES.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

(c) SPECIAL REFUNDS.—

(1) IN GENERAL.—If by reason of an employee receiving wages from more than one employer during a calendar year the wages received by him during such year exceed the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective with respect to such year, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 or section 3201, or by both such sections, and deducted from the employee's wages (whether or not paid to the Secretary), which exceeds the tax with respect to the amount of such wages received in such year which is equal to such contribution and benefit base. The term "wages" as used in this paragraph shall, for purposes of this paragraph, include "compensation" as defined in section 3231(e).

(2) APPLICABILITY IN CASE OF FEDERAL AND STATE EMPLOYEES, EMPLOYEES OF CERTAIN FOREIGN AFFILIATES, AND GOVERNMENTAL EMPLOYEES IN GUAM, AMERICAN SAMOA, AND THE DISTRICT OF COLUMBIA—

(A) FEDERAL EMPLOYEES.—In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal

[377] P.L. 100-647, §6276, added subsection (i).

agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year with respect to which such contribution and benefit base is effective, determined by each such head or agent as constituting wages paid to an employee.

(B) STATE EMPLOYEES.—For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) EMPLOYEES OF CERTAIN FOREIGN AFFILIATES.—For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121*(l)* as would be wages if such services constituted employment; the term "employer" includes any American employer which has entered into an agreement pursuant to section 3121*(l)*; the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121*(l)*, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121*(l)* has been paid to the Secretary.

(D) GOVERNMENTAL EMPLOYEES IN GUAM.—In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(E) GOVERNMENTAL EMPLOYEES IN AMERICAN SAMOA.—In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

(F) GOVERNMENTAL EMPLOYEES IN THE DISTRICT OF COLUMBIA.—In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125(d) shall, for purposes of this subsection, be deemed a separate employer.

(G) EMPLOYEES OF STATES AND POLITICAL SUBDIVISIONS.—In the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(3) APPLICABILITY WITH RESPECT TO COMPENSATION OF EMPLOYEES SUBJECT TO THE RAILROAD RETIREMENT TAX ACT.—In the case of any individual who, during any calendar year, receives wages from one or more employers and also receives compensation which is subject to the tax imposed by section 3201 or 3211, such compensation shall, solely for purposes of applying paragraph (1) with respect to the tax imposed by section 3101(b), be treated as wages received from an employer with respect to which the tax imposed by section 3101(b) was deducted.

(d) REFUND OR CREDIT OF FEDERAL UNEMPLOYMENT TAX.—Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

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CHAPTER 66—LIMITATIONS

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) PERIOD OF LIMITATION ON FILING CLAIM.—Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) LIMITATION ON ALLOWANCE OF CREDITS AND REFUNDS.—

(1) FILING OF CLAIM WITHIN PRESCRIBED PERIOD.—No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—

(A) Limit where claim filed within 3-year period.—If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period.—If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) LIMIT IF NO CLAIM FILED.—If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) SPECIAL RULES APPLICABLE IN CASE OF EXTENSION OF TIME BY AGREEMENT.—If an agreement under the provisions of section 6501(c)(4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) TIME FOR FILING CLAIM.—The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b)(1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501(c)(4).

(2) LIMIT ON AMOUNT.—If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) CLAIMS NOT SUBJECT TO SPECIAL RULE.—This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) prior to the execution of the agreement or

(B) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) SPECIAL RULES APPLICABLE TO INCOME TAXES.—

(1) SEVEN-YEAR PERIOD OF LIMITATION WITH RESPECT TO BAD DEBTS AND WORTHLESS SECURITIES.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS OR CAPITAL LOSS CARRYBACKS.—

(A) Period of limitation.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that with respect to an overpayment attributable to the creation of, or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABLE RULES.—

(i) IN GENERAL.—If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback or a capital loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph.

(ii) TENTATIVE CARRYBACK ADJUSTMENTS.—If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit, or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411(a).

(iii) DETERMINATIONS BY COURTS TO BE CONCLUSIVE.—In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to—

(I) the net operating loss deduction and the effect of such deduction, and

(II) the determination of a short-term capital loss and the effect of such short-term capital loss, to the extent that such deduction or short-term capital loss is affected by a carryback which was not an issue in such proceeding.

(3) SPECIAL RULES RELATING TO FOREIGN TAX CREDIT.—

(A) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO FOREIGN TAXES PAID OR ACCRUED.—If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10

years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) EXCEPTION IN THE CASE OF FOREIGN TAXES PAID OR ACCRUED.—In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

(4) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO CERTAIN CREDIT CARRYBACKS.—

(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) APPLICABLE RULES.—If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

(C) CREDIT CARRYBACK DEFINED.—For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39.

(5) Special period of limitation with respect to self-employment tax in certain cases.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health and Human Services.

(6) Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

(e) SPECIAL RULES IN CASE OF MANUFACTURED SUGAR.—

(1) USE AS LIVESTOCK FEED OR FOR DISTILLATION OR PRODUCTION OF ALCOHOL.—No payment shall be allowed under section 6418(a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) EXPORTATION.—No payment shall be allowed under section 6418(b) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(f) Special Rule for Chapter 42 and Similar[276] Taxes.—For purposes of any tax

[276]P.L. 100-647, §1018(v)(51)(B), struck out "Certain Chapter 43" and substituted "Similar".

imposed by section 4912, chapter 42,[279] or section 4975, the return referred to in subsection (a) shall be the return specified in section 6501(l)(1).

(g) SPECIAL RULE FOR CLAIMS WITH RESPECT TO PARTNERSHIP ITEMS.—In the case of any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (as defined in section 6231(a)(3)), the provisions of section 6227 and subsections (c) and (d) of section 6230 shall apply in lieu of the provisions of this subchapter.

(h)[280] CROSS REFERENCES.—

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(d)[281].

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

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(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

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(2) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER PARAGRAPH (1).—

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(C) SPECIAL RULES.—For purposes of this paragraph—

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(iii) ADJUSTED SELF-EMPLOYMENT INCOME.—The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)), except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) RETURNS AND RETURN INFORMATION.—

(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or

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[279] P.L. 100-647, §1018(v)(51)(A), struck out "chapter 42" and substituted "section 4912, chapter 42,".

[280] P.L. 100-418, §1941(b)(2)(I), struck out subsection (h) and redesignated subsection (i) as subsection (h).

[281] P.L. 100-647, §1017(c)(11), struck out "6421(c)" in subsection (i)(6) and substituted "6421(d)". Executed as if this amendment reads "in subsection (h)(6)".

employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i),[382] (l)(6), (7), (8), (9), or (10)[383] or (m)(2), (4), or (6)[384] of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) OTHER PERSONS.—It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) SOLICITATION.—It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) SHAREHOLDERS.—It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) DISCLOSURE OF OPERATIONS OF MANUFACTURER OR PRODUCER.—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) DISCLOSURES BY CERTAIN DELEGATES OF SECRETARY.—All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(d) CROSS REFERENCES.—

(1) PENALTIES FOR DISCLOSURE OF INFORMATION BY PREPARERS OF RETURNS.—For penalty for disclosure or use of information by preparers of returns, see section 7216.

(2) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

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CHAPTER 80—GENERAL RULES

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SEC. 7852. OTHER APPLICABLE RULES.

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(b) REFERENCE IN OTHER LAWS TO INTERNAL REVENUE CODE OF 1939.—Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or

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[382] As in original. One comma should be stricken.
[383] P.L. 100-485, §701(b)(2)(C), struck out "(10), or (11)" and substituted "or (10)".
[384] P.L. 100-647, §8008(c)(2)(B), struck out "or (4)" and substituted ", (4), or (6)".

manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

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SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.[355]

(a) IN GENERAL.—

(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

(b) DEFINITIONS.—For purposes of this section—

(1) FISHING RIGHTS-RELATED ACTIVITY.—The term "fishing rights-related activity" means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

(2) RECOGNIZED FISHING RIGHTS.—The term "recognized fishing rights" means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

(3) QUALIFIED INDIAN ENTITY.—

(A) IN GENERAL.—The term "qualified Indian entity" means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

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[*Internal References.*—There are citations to the Internal Revenue Code of 1939 in Social Security Act §§201(a) and (g); 205(c); 208(a); 209(e); 1106(a); and 1107(a). There are citations to the Internal Revenue Code of 1954 and 1986 in Social Security Act

[355] P.L. 100-647, §3041(a), added §7873.

§§201(a), (b), and (g); 202(v); 203(f) and (k); 205(c) and (p); 208(a); 209(b), (e), (f), (k), (p), (q), (r), (s), and (t); 210(a), (p), and (q); 211(a), (c), (d), (e), and (h); 215(a); 216(j); 218(e); 229(b); 230(c); 232; 303(a); 402(a) and (g); 452(b); 462(g); 464(a); 706(d); 709(a); 710(a) and (b); 901(d) and (g); 903(b); 1101(a); 1107(a); 1131(a); 1137(a), (b) and (c); 1141(b) and (g); 1202(b); 1611(d); 1612(a); 1631(b) and (e); 1817(a) and (f); 1817A(a); 1839(g); 1841(a); 1841A(a) and (d); 1841B(a), (b), and (c); 1844(a); 1862(b); 1886(b); and 2002(a). There are citations to the Federal Unemployment Tax Act [§§3301-3311 of the IRC] in SSAct §§302(a); 303(a); 901(b), (c) and (d); and 904(g). Social Security Act §§201(a), (b), and (g); 202(v); 203(f); 205(c); 208(a), 209(e) and (f); 210(a) and (q); 211(a) and (c); 215(a); 229(b); 230(c); 302(a); 303(a); 454(8); 462(g); 706(d); 709(a); 710(a) and (b); 901(b), (c), (d), and (g); 903(b); 904(g); 1202(b); 1612(a); 1817(a) and (f); and 1886(b); and catchlines to title IV (Part D) and §§207; 218; 232; 1106; 1131; and 1201 have footnotes referring to P.L. 83-591.]

P.L. 84-885, Approved August 1, 1956 (70 Stat. 890)
[State Department Basic Authorities Act of 1956]

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SEC. 33. [22 U.S.C. 2705] The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

(2) The report, designated as a "Report of Birth Abroad of a Citizen of the United States", issued by a consular officer to document a citizen born abroad.

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[*Internal Reference.*—The catchline to Social Security §205 has a footnote referring to P.L. 84-885.]

P.L. 86-372, Approved September 23, 1959 (73 Stat. 654)
Housing Act of 1959

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SEC. 202. [12 U.S.C. 1701q] (a)(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or handicapped families.

(2) In order to carry out the purpose of this section, the Secretary may make loans to any corporation (as defined in subsection (d)(2)), to any limited profit sponsor approved by the Secretary, to any consumer cooperative, or to any public body or agency for the provision of rental or cooperative housing and related facilities for elderly or handicapped families, except that (A) no such loan shall be made unless the applicant shows that it is unable to secure the necessary funds from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this section, (B) no such loan shall be made unless the Secretary finds that the construction will be undertaken in an economical manner and that it will not be of elaborate or extravagant design or materials, and (C) no such loan shall be made to a public body or agency unless it certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937[1].

(3)(A)[2] A loan under this section may be in an amount not exceeding the total development cost (as defined in subsection (d)(3)), as determined by the Secretary, except that in the case of other than a corporation, consumer cooperative, or public body or agency the amount of the loan shall not exceed 90 per centum of the development cost; shall be secured in such manner and be repaid within such period, not exceeding fifty years, as may be determined by him; and shall bear interest at a

[1]P.L. 75-412 (50 Stat. 888), approved September 1, 1937.
[2]P.L. 100-242, §161(c)(1)(A), inserted "(A)".

rate which is not more than a rate determined by the taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States[3], adjusted to the nearest one-eighth of 1 per centum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program, except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum.

(B) At the option of the borrower, a loan under this section may be made and may be processed for a conditional or firm commitment either (i) at an interest rate not to exceed a rate and allowance determined by the Secretary in accordance with subparagraph (A) using the 1-month period immediately prior to the month in which the request for a commitment is submitted; or (ii) at an interest rate not to exceed a rate and allowance determined by the Secretary in accordance with subparagraph (A) using the 3-month period immediately preceding the fiscal year in which the request for a commitment is submitted.[4]

(4)(A) There is authorized to be appropriated for the purposes of this section not to exceed $500,000,000 which amount shall be increased by $150,000,000 on July 1, 1969. Amounts so appropriated, and the proceeds from notes or other obligations issued under subparagraph (B), shall constitute a revolving fund to be used by the Secretary in carrying out this section.

(B)(i) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed $1,475,000,000, which amount shall be increased to $2,387,500,000 on October 1, 1977, to $3,300,000,000 on October 1, 1978, to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980, to $5,752,500,000 on October 1, 1981, to $6,400,000,000 on October 1, 1983,[5] to such sum as may be approved in an appropriation Act on October 1, 1984, and to such sums as may[6] approved in appropriation Acts for fiscal years 1988 and 1989,[7],[8] in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States.[9] The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act[10]; and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Secretary may not issue notes or other obligations to the Secretary of the Treasury pursuant to this section in an aggregate amount exceeding $800,000,000 except as approved in appropriation Acts.

(ii) The receipts and disbursements of the fund shall not be included in the total of the Budget of the United States Government and shall be exempt from any limitation on annual expenditure or net lending.

(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subparagraph (B). The aggregate loans made under this section shall not exceed the limits on such lending authority established in appropriation Acts, and not more than $666,400,000 may be approved in appropriation Acts for such loans with respect to fiscal year 1984. For fiscal years 1988 and 1989, not more than $621,701,000 and $630,000,000, respectively, may be approved in appropriation Acts for such loans.[11]

(5) To the maximum extent practicable, the Secretary shall use the services and facilities of the private mortgage industry in servicing mortgage loans made under this section.

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[3]P.L. 100-242, §161(c)(1)(B), struck out "Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made" and substituted "taking into consideration the average yield, during the 3-month period immediately preceding the fiscal year in which the loan is made, on the most recently issued 30-year marketable obligations of the United States".

[4]P.L. 100-242, §161(c)(1)(C), added subparagraph (B).

[5]P.L. 100-242, §161(a)(1), struck out "and".

[6]As in original. Possibly should insert "be".

[7]P.L. 100-242, §161(a)(2), inserted "and to such sums as may approved in appropriation Acts for fiscal years 1988 and 1989,".

[8]As in original. One comma should be stricken.

[9]P.L. 100-242, §161(d), amended this sentence in its entirety.

[10]P.L. 97-258, §4(b), deemed this reference to be "chapter 31 of title 31".

[11]P.L. 100-242, §161(b), added this sentence.

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(b) In the performance of, and with respect to, the functions, powers, and duties vested in him by this section the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402 (except subsection (c)(2)) of the Housing Act of 1950[12].

(c)(1) Housing constructed with a loan made under this section shall not be used for transient or hotel purposes while such loan is outstanding.

(2) As used in paragraph (1), the term "transient or hotel purposes" shall have such meaning as may be prescribed by the Secretary, but rental for any period less than thirty days shall in any event constitute use for such purposes. The provisions of subsections (f) through (j) of section 513 of the National Housing Act[13] (as added by section 132 of the Housing Act of 1954[14]) shall apply in the case of violations of paragraph (1) as though the housing described in such subsection were multifamily housing (as defined in section 513(e)(2) of the National Housing Act) with respect to which a mortgage is insured under such Act.

(3) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this section and designed for dwelling use by 12 or more elderly or handicapped families[15] shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931[16], as amended (the Davis-Bacon Act[17]); but the Secretary may waive the application of this paragraph in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

(d) As used in this section—

(1) The term "housing" means structures suitable for dwelling use by elderly or handicapped families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

(2) The term "corporation" means any incorporated private institution or foundation—

(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(B) which has a governing board (i) the membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such project is located, and (ii) which is responsible for the operation of the housing project assisted under this section; and

(C) which is approved by the Secretary as to financial responsibility.

(3) The term "development cost" means costs of construction of housing and of other related facilities, the cost of movables necessary to the basic operation of the project as determined by the Secretary, and of the land on which it is located, including necessary site improvement, which cost shall be determined without regard to mortgage limits applicable to housing projects subject to mortgages insured under section 231 of the National Housing Act[18]. In the case of housing to meet the needs of handicapped (primarily nonelderly) persons, such term also means the cost of acquiring existing housing and related facilities, the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation, thereof, and the cost of the land on which the housing and related facilities are located.

(4) The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable

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[12]P.L. 81-475.
[13]P.L. 73-479.
[14]P.L. 83-560.
[15]P.L. 100-242, §162(b)(3), inserted "and designed for dwelling use by 12 or more elderly or handicapped families".
[16]P.L. 71-798.
[17]P.L. 74-403.
[18]P.L. 73-479, (Vol. II, p. 230).

housing conditions. A person shall also be considered handicapped if such person has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7))[19]. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this section. Notwithstanding the preceding provisions of this paragraph, the term "elderly or handicapped families" includes two or more elderly or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be essential to their care or well-being, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this section, with the deceased member of the family at the time of his or her death.

(5) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

(6) The term "Secretary" means the Secretary of Housing and Urban Development.

(7) The term "construction" means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures.

(8) The term "related facilities" means (A) new structures suitable for use by elderly or handicapped families residing in the project or in the area as cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities, and (B) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for such uses.

(9) The term "housing for handicapped families" means housing and related facilities to be occupied by handicapped families who are primarily nonelderly handicapped families.[20]

(10) The term "nonelderly handicapped families" means elderly or handicapped families, the head of which (and spouse, if any) is less than 62 years of age at the time of initial occupancy of a project assisted under this section.[21]

(e) Nothing in this section or in regulations promulgated under this section shall prevent a corporation or consumer cooperative from obtaining a loan under this section for the provision of housing and related facilities for elderly or handicapped families, notwithstanding the fact that such corporation or cooperative has theretofore obtained a commitment from the Federal Housing Administration for mortgage insurance under section 231 of the National Housing Act with respect to the housing involved, if (1) such corporation or cooperative is otherwise eligible for such loan under this section, (2) such commitment was obtained prior to the date of enactment of the Housing Act of 1961[22], and (3) the Secretary determines that the financing of such housing through a loan under this section rather than through mortgage insurance under such section 231 is necessary or desirable in order to avoid hardship for the elderly or handicapped families who are the prospective tenants of such housing.

(f)(1)[23] In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health (including adult day health services), continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health and Human Services pursuant to section 133[24] of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963[25] or pursuant to title III of the Older Americans Act of 1965[26].

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[19] P.L. 100-242, §170(g)(1), struck out "is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950" and substituted "has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7))".

[20] P.L. 100-242, §162(b)(2), added paragraph (9).

[21] P.L. 100-242, §162(b)(2), added paragraph (10).

[22] June 30, 1961 (P.L. 87-70, 75 Stat. 149).

[23] P.L. 100-242, §162(c)(1), inserted "(1)".

[24] P.L. 100-242, §170(g)(2), struck out "134" and substituted "133".

[25] P.L. 88-164.

[26] P.L. 89-73.

(2) Each applicant for a loan under this section for housing and related facilities shall submit with the application a supportive services plan describing—

(A) the category or categories of families such housing and facilities are intended to serve;

(B) the range of necessary services to be provided to the families occupying such housing;

(C) the manner in which such services will be provided to such families; and

(D) the extent of State and local funds available to assist in the provision of such services.[27]

(g) In carrying out the provisions of this section and section 8 of the United States Housing Act of 1937[28], the Secretary shall issue and implement regulations, as soon as practicable after the date of enactment of Housing and Community Development Act of 1977[29], which shall provide that the processing of any application for a loan for a project under this section and the processing of any application for assistance under such section 8 with respect to housing units in the same such project shall be coordinated in an economical and efficient manner. At the time of settlement on permanent financing with respect to a project under this section, the Secretary shall make an appropriate adjustment in the amount of any assistance to be provided under a contract for annual contributions pursuant to section 8 of the United States Housing Act of 1937 in order to reflect fully any difference between the interest rate which will actually be charged in connection with such permanent financing and the interest rate which was in effect at the time of the reservation of assistance in connection with the project.

(h)(1) Of the amounts made available in appropriation Acts for loans under subsection (a)(4)(C) for any fiscal year commencing after September 30, 1987, not less than 15 percent shall be available for loans for the development costs of housing for handicapped families. If the amount required for any such fiscal year for approvable applications for loan under this subsection is less than the amount available under this paragraph, the balance shall be made available for loans under other provisions of this section.

(2) The Secretary shall take such actions as may be necessary to ensure that—

(A) funds made available under this subsection will be used to support a variety of methods of meeting the needs primarily of nonelderly handicapped families by providing a variety of housing options, ranging from small group homes to independent living complexes; and

(B) housing for handicapped families assisted under this subsection will provide families occupying units in such housing with an assured range of services specified in subsection (f), will provide such families with opportunities for optimal independent living and participation in normal daily activities, and will facilitate access by such families to the community at large and to suitable employment opportunities within such community.

(3)(A) In allocating funds under this subsection, and in processing applications for loans under this section and assistance payments under paragraph (4), the Secretary shall adopt such distinct standards and procedures as the Secretary determines appropriate due to differences between housing for handicapped families and other housing assisted under this section. In adopting such standards, the Secretary shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act.

(B) The Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. Any such demonstration shall be limited to the 3-year period following the date of the enactment of the Housing and Community Development Act of 1987, may only involve projects whose sponsors consent to participation in such demonstration, and shall be described in a report submitted by the Secretary to the Congress following completion of such demonstation.

(4)(A) The Secretary shall, to the extent approved in appropriation Acts, enter into contracts with owners of housing for handicapped families receiving loans under, or meeting the requirements of, this section to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by lower income families that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain

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[27] P.L. 100-242, §162(c)(2), added paragraph (2).
[28] P.L. 75-412.
[29] October 12, 1977 (P.L. 95-128, 91 Stat. 1111).

available to the project until the expiration of the contract. The term of a contract entered into under this subparagraph shall be 240 months. The annual contract amount may be adjusted by the Secretary if the sum of the project income and the amount of assistance payments available under this subparagraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility in which there reside families assisted under title XIX of the Social Security Act, project income under this subparagraph shall include the same amount as if such families were being assisted under title XVI of the Social Security Act.

(B) The Secretary shall approve initial project rentals for any project assisted under this subsection based on the determination of the Secretary of the total actual necessary and reasonable costs of developing and operating the project, excluding the costs of the assured range of services under subsection (f), taking into consideration the need to contain costs to the extent practicable and consistent with the purposes of the project and this section.

(C) The Secretary shall require that, during the term of each contract entered into under subparagraph (A), all units in a project assisted under this subsection shall be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937. The rent payment required of a lower income family shall be determined in accordance with section 3(a) of such Act, except that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the family were being assisted under title XVI of the Social Security Act.

(D) The Secretary shall coordinate the processing of an application for a loan for housing for handicapped families under this section and the processing of an application for assistance payments under this paragraph for such housing.[30]

(i)(1) Unless otherwise requested by the sponsor, a maximum of 25 per centum of the units in a project financed under this section may be efficiency units, subject to a determination by the Secretary that such units are appropriate for the elderly or handicapped population residing in the vicinity of such project or to be served by such project.

(2) The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor.

(3) In establishing per unit cost limitations for purposes of this section, the Secretary shall take into account design features necessary to meet the needs of elderly and handicapped residents, and such limitations shall reflect the cost of providing such features. The Secretary shall adjust the per unit cost limitations in effect on January 1, 1983, not less than once annually to reflect changes in the general level of construction costs.

(j)(1) The Secretary may not approve the prepayment of any loan made under this section, or transfer such loan, unless such prepayment or transfer is made as part of a transaction that will ensure that the project involved will continue to operate until the original maturity date of such loan in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement entered into under this section and any other loan agreements entered into under other provisions of law.

(2) The Secretary may not sell any mortgage held by the Secretary as security for a loan made under this section.

(k)(1) In the process of selecting projects for loans under this section, the Secretary shall assure the inclusion of special design features and congregate space if necessary to meet the special needs of elderly and handicapped residents.

(2) The Secretary shall encourage the provision of small and scattered site group homes and independent living facilities for nonelderly handicapped persons and families.

(l) The basis for selection of a contractor to be employed in the development or construction of a project assisted under this section shall be determined by the project sponsor or borrower if the development cost of the project is less than $2,000,000, if the project rentals will be less than 110 per centum of the fair market rent applicable to projects financed under this section, or if the sponsor of the project is a labor organization. The Secretary shall not impose different[31] requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower.

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[30] P.L. 100-242, §162(b)(1), amended subsection (h) in its entirety.
[31] P.L. 100-242, §170(g)(3), struck out "difference" and substituted "different".

(m) Nothing in this section authorizes the Secretary to prohibit any sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed with the loan, and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.

(n) The Secretary shall notify the project sponsor not less than 30 days prior to canceling any loan authority provided under this section. During the 30-day period following the receipt of a notice under paragraph (1), a sponsor may appeal the proposed cancellation of loan authority. Such appeal, including review by the Secretary, shall be completed not later than 45 days after the appeal is filed.[32]

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[*Internal References.*—Social Security Act §1612(b) cites the Housing Act of 1959 and §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), and 1612(b) have footnotes referring to P.L. 86-372. P.L. 73-479, §231(f), P.L. 89-73, §203(b), and P.L. 95-557, §410(b), cite the Housing Act of 1959.]

P.L. 87-293, Approved September 22, 1961 (75 Stat. 612)
Peace Corps Act

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PEACE CORPS VOLUNTEERS

SEC. 5. [22 U.S.C. 2504] (a) The President may enroll in the Peace Corps for service abroad qualified citizens and nationals of the United States (referred to in this Act as "volunteers"). The terms and conditions of the enrollment, training, compensation, hours of work, benefits, leave, termination, and all other terms and conditions of the service of volunteers shall be exclusively those set forth in this Act and those consistent therewith which the President may prescribe; and, except as provided in this Act, volunteers shall not be deemed officers or employees or otherwise in the service or employment of, or holding office under, the United States for any purpose. In carrying out this subsection, there shall be no discrimination against any person on account of race, sex, creed, or color.

(b) Volunteers shall be provided with such living, travel, and leave allowances, and such housing, transportation, supplies, equipment, subsistence, and clothing as the President may determine to be necessary for their maintenance and to insure their health and their capacity to serve effectively. Supplies or equipment provided volunteers to insure their capacity to serve effectively may be transferred to the government or to other entities of the country or area with which they have been serving, when no longer necessary for such purpose, and when such transfers would further the purposes of this Act. Transportation and travel allowances may also be provided, in such circumstances as the President may determine, for applicants for enrollment to or from places of training and places of enrollment, and for former volunteers from places of termination to their homes in the United States.

(c) Volunteers shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President. The readjustment allowance of each volunteer shall be payable on his return to the United States: *Provided, however,* That, under such circumstances as the President may determine, the accrued readjustment allowance, or any part thereof, may be paid to the volunteer, members of his family or others, during the period of his service, or prior to his return to the United States. In the event of the volunteer's death during the period of his service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582(b) of title 5, United States Code. For purposes of the Internal Revenue Code of 1954 (26 U.S.C.), a volunteer shall be deemed to be paid and to receive each amount of a readjustment allowance to which he is entitled after December 31, 1964, when such amount is transferred from funds made available under this Act to the fund from which such readjustment allowance is payable.

[(d) Repealed.]

(e) Volunteers shall receive such health care during their service, applicants for enrollment shall receive such health examinations preparatory to their service, applicants for enrollment who have accepted an invitation to begin a period of

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[32] P.L. 100-242, §161(e), added subsection (n).

training under section 8(a) of this Act shall receive such immunization and dental care preparatory to their service, and former volunteers shall receive such health examinations within six months after termination of their service, as the President may deem necessary or appropriate. Subject to such conditions as the President may prescribe, such health care may be provided in any facility of any agency of the United States Government, and in such cases the appropriation for maintaining and operating such facility shall be reimbursed from appropriations available under this Act.

(f)(1) Any period of satisfactory service of a volunteer under this Act shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(A) for the purposes of section 816(a) of the Foreign Service Act of 1980 and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(B) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission[1], of the Foreign Service Act of 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(2) For the purposes of paragraph (1)(A) of this subsection, volunteers and volunteer leaders shall be deemed to be receiving compensation during their service at the respective rates of readjustment allowances payable under sections 5(c) and 6(1) of this Act.

(g) The President may detail or assign volunteers or otherwise make them available to any entity referred to in paragraph (1) of section 10(a) on such terms and conditions as he may determine: *Provided*, That not to exceed two hundred volunteers may be assigned to carry out secretarial or clerical duties on the staffs of the Peace Corps representatives abroad: *Provided, however*, That any volunteer so detailed or assigned shall continue to be entitled to the allowances, benefits and privileges of volunteers authorized under or pursuant to this Act.

(h) Volunteers shall be deemed employees of the United States Government for the purposes of the Federal Tort Claims Act and any other Federal tort liability statute, the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc et seq.), the Act of December 23, 1944, chapter 716, section 1, as amended (31 U.S.C. 492a), section 5584 of title 5, United States Code (and readjustment allowances paid under this Act shall be considered as pay for purposes of such section), and section 1 of the Act of June 4, 1920 (41 Stat. 750), as amended (22 U.S.C. 214).

(i) The service of a volunteer may be terminated at any time at the pleasure of the President.

(j) Upon enrollment in the Peace Corps, every volunteer shall take the oath prescribed for persons appointed to any office of honor or profit by section 3331 of title 5, United States Code, and shall swear (or affirm) that he does not advocate the overthrow of our constitutional form of government in the United States, and that he is not a member of an organization that advocates the overthrow of our constitutional form of government in the United States, knowing that such organization so advocates.

(k) In order to assure that the skills and experience which former volunteers have derived from their training and their service abroad are best utilized in the national interest, the President may, in cooperation with agencies of the United States, private employers, educational institutions and other entities of the United States, undertake programs under which volunteers would be counseled with respect to opportunities for further education and employment.

(l) Notwithstanding any other provision of law, counsel may be employed and counsel fees, court costs, bail, and other expenses incident to the defense of volunteers may be paid in foreign judicial or administrative proceedings to which volunteers have been made parties.

(m) The minor children of a volunteer living with the volunteer may receive—

(1) such living, travel, education, and leave allowances, such housing, transportation, subsistence, and essential special items of clothing as the President may determine;

(2) such health care, including health care following the volunteer's service or illness or injury incurred during such service, and health and accident insurance, as the President may determine and upon such terms as he may determine,

[1]Reorganization Plan No. 2 of 1978, §102, transferred the functions of the Civil Service Commission to the Director of the Office of Personnel Management.

including health care in any facility referred to in subsection (e) of this section, subject to such conditions as the President may prescribe and subject to reimbursement of appropriations as provided in such subsection (e);

(3) such orientation, language, and other training necessary to accomplish the purposes of this Act as the President may determine; and

(4) the benefits of subsection (l) of this section on the same basis as volunteers.

(n) The costs of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a volunteer who has one or more minor children at the time of his entering a period of pre-enrollment training may be paid from the date of his departure from his place of residence to enter training until no later than three months after termination of his service.

PEACE CORPS VOLUNTEER LEADERS

SEC. 6. [22 U.S.C. 2505] The President may enroll in the Peace Corps qualified citizens or nationals of the United States whose services are required for supervisory or other special duties or responsibilities in connection with programs under this Act (referred to in this Act as "volunteer leaders"). The ratio of the total number of volunteer leaders to the total number of volunteers in service at any one time shall not exceed one to twenty-five. Except as otherwise provided in this Act, all of the provisions of this Act applicable to volunteers shall be applicable to volunteer leaders, and the term "volunteers" shall include "volunteer leaders": *Provided, however,* That—

(1) volunteer leaders shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President;

(2) spouses and minor children of volunteer leaders may receive such living, travel, and leave allowances, and such housing, transportation, subsistence, and essential special items of clothing, as the President may determine, but the authority contained in this paragraph shall be exercised only under exceptional circumstances;

(3) spouses and minor children of volunteer leaders accompanying them may receive such health care as the President may determine and upon such terms as he may determine, including health care in any facility referred to in section 5(e) of this Act, subject to such conditions as the President may prescribe and subject to reimbursement of appropriations as provided in section 5(e); and

(4) spouses and minor children of volunteer leaders accompanying them may receive such orientation, language, and other training necessary to accomplish the purposes of this Act as the President may determine.

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[*Internal References.*—Social Security Act §§205(p), 209, and 210(o) cite the Peace Corps Act.]

P.L. 87-543, Approved July 25, 1962 (76 Stat. 172)
Public Welfare Amendments of 1962

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SEC. 141.

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(b) [42 U.S.C. 1382e note] No payment may be made to a State under title I, X, or XIV of the Social Security Act for any period for which such State receives any payments under title XVI of such Act or any period thereafter.

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(f) [42 U.S.C. 1382e note] In the case of any State which has a State plan approved under title XVI of the Social Security Act, any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403, shall, for purposes of section 1603(b) of such Act, be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act.

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[*Internal References.*—Social Security Act titles I, X, and XIV have footnotes referring to P. L. 87-543.]

P.L. 87-781, Approved October 10, 1962 (76 Stat. 780)
Drug Amendments of 1962

SEC. 107. [21 U.S.C. 321 note]

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(c)(1) As used in this subsection, the term "enactment date" means the date of enactment of this Act; and the term "basic Act" means the Federal Food, Drug, and Cosmetic Act[1].

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(3) In the case of any drug with respect to which an application filed under section 505(b) of the basic Act is deemed to be an approved application on the enactment date by virtue of paragraph (2) of this subsection—

(A) the amendments made by this Act to section 201(p), and to subsections (b) and (d) of section 505, of the basic Act, insofar as such amendments relate to the effectiveness of drugs, shall not, so long as approval of such application is not withdrawn or suspended pursuant to section 505(e) of that Act, apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application, but shall apply to any changed use, or conditions of use, prescribed, recommended, or suggested in its labeling, including such conditions of use as are the subject of an amendment or supplement to such application pending on, or filed after, the enactment date; and

(B) clause (3) of the first sentence of section 505(e) of the basic Act, as amended by this Act, shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application (except with respect to such use, or conditions of use, as are the subject of an amendment or supplement to such approved application, which amendment or supplement has been approved after the enactment date under section 505 of the basic Act as amended by this Act) until whichever of the following first occurs: (i) the expiration of the two-year period beginning with the enactment date; (ii) the effective date of an order under section 505(e) of the basic Act, other than clause (3) of the first sentence of such section 505(e), withdrawing or suspending the approval of such application.

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[*Internal Reference.*—Social Security Act §§1861(t) and 1862(c) cite the Drug Amendments of 1962.]

P.L. 88-164, Approved October 31, 1963 (77 Stat. 282)
Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963

TITLE I—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES[1]

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. 100. [42 U.S.C. 6000 note] This title may be cited as the "Developmental Disabilities Assistance and Bill of Rights Act".

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[1]P.L. 75-717 (Vol. II, p. 249).
[1]P.L. 98-527, §2, amended Title I in its entirety.

REPORTS

SEC. 107. [42 U.S.C. 6006] (a) By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

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(4) a description of the State Planning Council's response to significant actions taken by the State with respect to each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State; and[2]

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STATE PLANNING COUNCILS

SEC. 124. [42 U.S.C. 6024]

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(b) * * *

(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act, the State agency that administers funds provided under the Older Americans Act of 1965, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.[3]

(4) At least one-half of the membership of each State Planning Council shall consist of persons who—

(A) are persons with developmental disabilities;

(B) are parents or guardians of such persons; or

(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

and who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.[4]

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PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

PURPOSE

SEC. 141. [42 U.S.C. 6041] It is the purpose of this part to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 142.

SYSTEM REQUIRED

SEC. 142. [42 U.S.C. 6042] (a) In order for a State to receive an allotment under part B—

(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

(2) such system must—

(A) have the authority to—

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[2] P.L. 100-146, §103(a)(3), added paragraph (4).
[3] P.L. 100-146, §204(2), added this paragraph.
[4] See footnote 3.

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;[6]

(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;[6]

(C) on an annual basis, provide the public with an opportunity to comment on priorities established by, and activities of, the system;[7]

(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;[8]

(E)[9] not be administered by the State Planning Council;

(F)[10] be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

(G) have access to all records of—

(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access; and

(ii) any person with developmental disabilities—

(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(III) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such person has been subject to abuse or neglect;[11]

(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

(b)[12] (1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsection (a)(1) and subsection (d) of section 125, except that in any case in which—

(A) the total amount appropriated under section 143 for a fiscal year is at least $20,000,000[13]—

(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $107,000[14]; and

(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than $200,000[15]; or

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[6] P.L. 100-146, §301(a)(2), amended subparagraph (A) in its entirety.
[6] P.L. 100-146, §301(a)(2), added this subparagraph (B).
[7] P.L. 100-146, §301(a)(2), added this subparagraph (C).
[8] P.L. 100-146, §301(a)(2), added this subparagraph (D).
[9] P.L. 100-146, §301(a)(1), redesignated the former subparagraph (B) as subparagraph (E).
[10] P.L. 100-146, §301(a)(1), redesignated the former subparagraph (C) as subparagraph (F).
[11] P.L. 100-146, §301(a)(1), redesignated the former subparagraph (D) as subparagraph (G).
P.L. 100-146, §301(a)(3), amended subparagraph (G) [as redesignated] in its entirety.
[12] P.L. 100-146, §301(c)(1) struck out subsection (b).
P.L. 100-146, §301(c)(2), redesignated subsection (c) as subsection (b).
[13] P.L. 100-146, §301(b)(1), struck out "$11,000,000" and substituted "$20,000,000".
[14] P.L. 100-146, §301(b)(2), struck out "$80,000" and substituted "$107,000".
[15] P.L. 100-146, §301(b)(3), struck out "$150,000" and substituted "$200,000".

(B) the total amount appropriated under section 143 for a fiscal year is less than $20,000,000[16], the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than $150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000[17].

(2) In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary may increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 143 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 143 for such preceding fiscal year.[18]

(3)[19] A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

(4)[20] Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 143, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

(c) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.[21]

AUTHORIZATION OF APPROPRIATIONS[22]

SEC. 143. [42 U.S.C. 6043] For allotments under section 142, there are authorized to be appropriated $20,000,000 for fiscal year 1988, $22,000,000 for fiscal year 1989, and $24,200,000 for fiscal year 1990.

* * * * * * *

[*Internal References.*—Social Security Act §1919(c) cites the Developmental Disabilities Assistance and Bill of Rights Act. The catchlines to Social Security Act titles XI and XIX and §1902(a) have footnotes referring to P.L. 88-164.]

P.L. 88-210, Approved December 18, 1963 (77 Stat. 403)
Carl D. Perkins Vocational Education Act[1]

* * * * * * *

STATE ADMINISTRATION

SEC. 111. [20 U.S.C. 2321] (a)(1) Any State desiring to participate in the vocational education program authorized by this Act shall, consistent with State law, designate or

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[16]P.L. 100-146, §301(b)(4), struck out "$11,000,000" and substituted "$20,000,000".
[17]P.L. 100-146, §301(b)(5), struck out "$50,000" and substituted "$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000".
[18]P.L. 100-146, §301(b)(7), added this paragraph (2).
[19]P.L. 100-146, §301(b)(6), redesignated the former paragraph (2) as paragraph (3).
[20]P.L. 100-146, §301(b)(6), redesignated the former paragraph (3) as paragraph (4).
[21]P.L. 100-146, §301(c)(3), added this subsection (c).
[22]P.L. 100-146, §302, amended §143 in its entirety.
[1]P.L. 98-524 amended P.L. 88-210 in its entirety.

establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State vocational education program. The responsibilities of the State board shall include—

* * * * * * *

(E) the adoption of such procedures as the State board considers necessary to implement State level coordination with the State job training coordinating council to encourage cooperation in the conduct of their respective programs.

* * * * * * *

STATE COUNCIL ON VOCATIONAL EDUCATION

SEC. 112. [20 U.S.C. 2322] (a) Each State which desires to participate in vocational education programs authorized by this Act for any fiscal year shall establish a State council, which shall be appointed by the Governor or, in the case of States in which the members of the State board of education are elected (including election by the State legislature), by such board. Each State council shall be composed of 13 individuals, and shall be broadly representative of citizens and groups within the State having an interest in vocational education. Each State council shall consist of—

(1) seven individuals who are representative of the private sector in the State who shall constitute a majority of the membership—

(A) five of whom shall be representative of business, industry, and agriculture including—

(i) one member who is representative of small business concerns; and

(ii) one member who is a private sector member of the State job training coordinating council (established pursuant to section 122 of the Job Training Partnership Act), and

(B) two of whom shall be representatives of labor organizations;

(2) six individuals who are representative of secondary and postsecondary vocational institutions (equitably distributed among such institutions), career guidance and counseling organizations within the State, individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations (including women, the disadvantaged, the handicapped, individuals with limited English proficiency, and minorities) and of whom one member shall be representative of special education.

In selecting individuals under subsection (a) to serve on the State council, due consideration shall be given to the appointment of individuals who serve on a private industry council under the Job Training Partnership Act, or on State councils established under other related Federal Acts.

* * * * * * *

(d) During each State plan period described in section 113(a)(1), each State council shall—

* * * * * * *

(9)(A) evaluate at least once every two years (i) the vocational education program delivery systems assisted under this Act, and under the Job Training Partnership Act, in terms of their adequacy and effectiveness in achieving the purposes of each of the two Acts and (ii) make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the Job Training Partnership Act and (B) advise the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

* * * * * * *

STATE PLANS

SEC. 113. [20 U.S.C. 2323]

* * * * * * *

(b) Each such plan shall—

* * * * * * *

(10) describe the methods proposed for the joint planning and coordination of programs carried out under this Act with programs conducted under the Job Training Partnership Act, the Adult Education Act, title I of the Elementary and

Secondary Education Act of 1965 as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981[1], the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs;

* * * * * * *

APPROVAL

SEC. 114. [20 U.S.C. 2324] (a)(1) Each State plan shall, not less than 60 days before the plan is to be submitted to the Secretary, be furnished to the State legislature and the State job training coordinating council of the State under section 122 of the Job Training Partnership Act for review and comment. If the matters covered by the comments of the State legislature and the State job training coordinating council are not covered by the State plan, the State shall submit the comments with the State plan to the Secretary.

* * * * * * *

LOCAL APPLICATION

SEC. 115. [20 U.S.C. 2325] (a) Except as provided in subsection (c), any eligible recipient desiring to receive assistance under this Act shall, according to requirements established by the State board, submit to the State board an application, covering the same period as the State plan, for the use of such assistance. The State board shall determine requirements for local applications (and amendments thereto), except that each such application shall—

(1) set forth the vocational education programs, services, and activities proposed to be funded; and

(2) describe the coordination with relevant programs conducted under the Job Training Partnership Act and the Adult Education Act, to avoid duplication.

(b) Each such local application shall be available for review and comment by interested parties, including the appropriate administrative entity under the Job Training Partnership Act.

* * * * * * *

COORDINATION WITH THE JOB TRAINING PARTNERSHIP ACT

SEC. 323. [20 U.S.C. 2373] (a) Each State receiving grants under this subpart[2] shall include in the State plan methods and procedures for coordinating vocational education programs, services, and activities funded under this subpart[3] to provide programs of assistance for dislocated workers funded under title III of the Job Training Partnership Act.

(b)(1) The State board shall consult with the State job training coordinating council (established under section 122 of the Job Training Partnership Act) in order that programs assisted under this subpart[4] may be taken into account by such council in formulating recommendations to the Governor for the Governor's coordination and special services plan required by section 121 of such Act.

(2) The State board shall also adopt such procedures as it considers necessary to encourage coordination between eligible recipients receiving funds under this subpart[5] and the appropriate administrative entity established under the Job Training Partnership Act in the conduct of their respective programs, in order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of such assistance.

* * * * * * *

COORDINATION WITH THE JOB TRAINING PARTNERSHIP ACT[7]

SEC. 328. [20 U.S.C. 2378] (a) REQUIREMENTS FOR INCLUSION IN STATE PLAN.—Each State receiving grants under this part shall include in the State plan methods and

[1] P.L. 100-297, §1003(a), repealed the Education Consolidation and Improvement Act of 1981 [P.L. 97-35, title V, subtitle D].
[2] P.L. 100-418, §6132(a)(2), struck out "part" and substituted "subpart".
[3] See footnote 2.
[4] See footnote 2.
[5] See footnote 2.
[7] P.L. 100-418, §6131(a)(3), added §328.

procedures for coordinating vocational education programs, services, and activities funded under this part to provide programs of assistance for dislocated workers funded under title III of the Job Training Partnership Act.

(b) CONSULTATION WITH STATE JOB TRAINING COORDINATING COUNCIL.—(1) The State board shall consult with the State job training coordinating council (established under section 122 of the Job Training Partnership Act) in order that programs assisted under this part may be taken into account by such council in formulating recommendations to the Governor for the Governor's coordination and special services plan required by section 121 of such Act.

(2) The State board shall also adopt such procedures as it considers necessary to encourage coordination between eligible recipients receiving funds under this part and the appropriate administrative entity established under the Job Training Partnership Act in the conduct of their respective programs, in order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of such assistance.

* * * * * * *

AUTHORIZATION OF GRANTS

SEC. 342. [20 U.S.C. 2392] (a) From the portion of the allotment of each State under section 101 available for this part, the Secretary shall make grants to the States to carry out industry-education partnership training programs in high-technology occupations in accordance with this part.

(b) Grants to any State under this part shall be used, in accordance with State plans which contain assurances to the Secretary that—

* * * * * * *

(2) to the maximum extent practicable, funds received under this part will be utilized in coordination with the Job Training Partnership Act to avoid duplication of effort and to ensure maximum effective utilization of funds under this Act and the Job Training Partnership Act;

* * * * * * *

NATIONAL CENTER FOR RESEARCH IN VOCATIONAL EDUCATION

SEC. 404. [20 U.S.C. 2404]

* * * * * * *

(b) The National Center shall have as its primary purposes the design and conduct of research and developmental projects and programs, including longitudinal studies, which extend over a period of years (with such supplementary and short-term activities through other grants and contracts as the Director may choose to undertake consistent with the purpose of this Act). Such projects, programs, and activities shall be conducted by the National Center directly and through subcontracts (subject to the availability of appropriations therefor) with other public agencies and public or private institutions of higher education. The National Center shall—

* * * * * * *

(8) after consultation with the National Commission for Employment Policy, report annually to the Congress, the Secretary of Education, and the Secretary of Labor on the extent, efficiency, and effectiveness of joint planning and coordination under this Act and the Job Training Partnership Act.

* * * * * * *

DEFINITIONS

SEC. 521. [20 U.S.C. 2471] As used in this Act:

* * * * * * *

(27) The term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(28) The term "State board" means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

(29) The term "State council" means the State council on vocational education established in accordance with section 112.

(30) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary or secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(31) The term "vocational education" means organized educational programs which are directly related to the preparation of individuals in paid or unpaid employment in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields, and in other occupations, requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program; and for purposes of this paragraph, the term "organized education program" means only (A) instruction (including career guidance and counseling) related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (B) the acquisition (including leasing), maintenance, and repair of instructional equipment, supplies, and teaching aids; but the terms do not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

* * * * * * *

[*Internal Reference.*—Social Security Act §483(c) cites the Carl D. Perkins Vocational Education Act.]

P.L. 88-352, Approved July 2, 1964 (78 Stat. 241)
Civil Rights Act of 1964

* * * * * * *

Title VI—Nondiscrimination in Federally Assisted Programs

SEC. 601. [42 U.S.C. 2000d] No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. [42 U.S.C. 2000d-1] Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity

involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. [42 U.S.C. 2000d-2] Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. [42 U.S.C. 2000d-3] Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. [42 U.S.C. 2000d-4] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

SEC. 606. [42 U.S.C. 2000d-4a] For the purposes of this title, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.[1]

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[*Internal References.*—Social Security Act §508(a) and (b) cites the Civil Rights Act of 1964 and SS Act titles I, IV, V, VII, IX, X, XI, XIV, XVI (State), XVIII, XIX, and XX have footnotes referring to P.L. 88-352.]

P.L. 88-525, Approved August 31, 1964 (78 Stat. 703)[1]
Food Stamp Act of 1977

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[1] P.L. 100-259, §6, added §606.
[1] P.L. 95-113, §1301, amended the Food Stamp Act of 1964 in its entirety, effective October 1, 1977.
[2] This table of contents does not appear in the law.

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SHORT TITLE

SECTION. 1. [7 U.S.C. 2011 note] This Act may be cited as the "Food Stamp Act of 1977".

DECLARATION OF POLICY

SEC. 2. [7 U.S.C. 2011] It is hereby declared to be the policy of Congress, in order to promote the general welfare, to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households. Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

DEFINITIONS

SEC. 3. [7 U.S.C. 2012] As used in this Act, the term:

(a) "Allotment" means the total value of coupons a household is authorized to receive during each month.

(b) "Authorization card" means the document issued by the State agency to an eligible household which shows the allotment the household is entitled to be issued.

(c) "Certification period" means the period for which households shall be eligible to receive authorization cards. For those households that are required to submit periodic reports under section 6(c)(1) of this Act, the certification period shall be at least six months but no longer than twelve months except that the foregoing limits on the certification period may, with the approval of the Secretary, be waived by a State agency for certain categories of households where such waiver will improve the administration of the program. For households that are not required to submit periodic reports, the certification period shall be determined as follows:

(1) In the case of a household all of whose members are included in a federally aided public assistance or general assistance grant, the period shall coincide with the period of such grant.

(2) In the case of all other households, the period shall be not less than three months: *Provided*, That such period may be up to twelve months for any household consisting entirely of unemployable or elderly or primarily self-employed persons, or as short as circumstances require for those households as to which there is a substantial likelihood of frequent changes in income or household status, and for any household on initial certification, as determined by the Secretary. The maximum limit of twelve months for such period under the foregoing proviso may be waived by the Secretary where such waiver will improve the administration of the program.

(d) "Coupon" means any coupon, stamp, or type of certificate issued pursuant to the provisions of this Act.

(e) "Coupon issuer" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has delegated functional responsibility in connection with, the issuance of coupons to households.

(f) "Drug addiction or alcoholic treatment and rehabilitation program" means any such program conducted by a private nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide treatment that can lead to the rehabilitation of drug addicts or alcoholics.

(g) "Food" means (1) any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized pursuant to clauses (3), (4), (5), (7), (8), and (9) of this subsection, (2) seeds and plants for use in gardens to produce food for the personal consumption of the eligible household, (3) in the case of those persons who are sixty years of age or over or who receive supplemental security income benefits under title XVI of the Social Security Act, and their spouses, meals prepared by and served in senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that feed such persons, private establishments that contract with the appropriate agency of the State to offer meals for such persons at concessional prices, and meals prepared for and served to residents of federally subsidized housing for the elderly, (4) in the case of persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, meals prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate State agency to perform such services at concessional prices, (5) in the case of narcotics addicts or alcoholics served by drug addiction or alcoholic treatment and rehabilitation programs, meals prepared and served under such programs, (6) in the case of certain eligible households living in Alaska, equipment for procuring food by hunting and fishing, such as nets, hooks, rods, harpoons, and knives (but not equipment for purposes of transportation, clothing, or shelter, and not firearms, ammunition, and explosives) if the Secretary determines that such households are located in an area of the State where it is extremely difficult to reach stores selling food and that such households depend to a substantial extent upon hunting and fishing for subsistence, (7) in the case of disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act, meals prepared and served under such arrangement, (8) in the case of women and children temporarily residing in public or private nonprofit shelters for battered women and children, meals prepared and served, by such shelters, and (9) in the case of households that do not reside in permanent dwellings and households that have no fixed mailing addresses, meals prepared for and served by a public or private nonprofit establishment (approved by an appropriate State or local agency) that feeds such individuals and by a public or private nonprofit shelter (approved by an appropriate State or local agency) in which such households temporarily reside (except that such establishments and shelters may only request voluntary use of food stamps by such individuals and may not request such households to pay more than the average cost of the food contained in a meal served by the establishment or shelter)[3].

(h) "Food stamp program" means the program operated pursuant to the provisions of this Act.

(i) "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others,[4] (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption, or (3) a parent of minor children and that parent's children (notwithstanding the presence in the home of any other persons, including parents and siblings of the parent with minor children) who customarily purchase food and prepare meals for home consumption separate from other persons, except that the certification of a household as a separate household under this clause shall be reexamined no less frequently than once every 6 months[5]; except that (other than as provided in clause (3))[6] parents and

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[3]P.L. 99-570, §11002(a)(3), added paragraph (9), effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.
[4]P.L. 100-77, §802(a)(1), struck out "or".
[5]P.L. 100-77, §802(a)(2), inserted ", or" and clause (3).
[6]P.L. 100-77, §802(a)(3), inserted "(other than as provided in clause (3))".

children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member. Notwithstanding clause (1) of the preceding sentence, an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers, as certified by a licensed physician, from a disability which would be considered a permanent disability under section 221(i) of the Social Security Act (42 U.S.C. 421(i)) or from a severe, permanent, and disabling physical or mental infirmity which is not symptomatic of a disease shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals, if the income (as determined under section 5(d)) of the others, excluding the spouse, does not exceed the poverty line, as described in section 5(c)(1), by more than 65 per centum. In no event shall any individual or group of individuals constitute a household if they reside in an institution or boarding house, or else live with others and pay compensation to the others for meals. For the purposes of this subsection, residents of federally subsidized housing for the elderly, disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act, temporary residents of public or private nonprofit shelters for battered women and children, residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,[7] and narcotics addicts or alcoholics who live under the supervision of a private nonprofit institution, or a publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program shall not be considered residents of institutions and shall be considered individual households.

(j) "Reservation" means the geographically defined area or areas over which a tribal organization (as that term is defined in section 3(p) of this Act) exercises governmental jurisdiction.

(k) "Retail food store" means (1) an establishment or recognized department thereof or house-to-house trade route, over 50 per centum of whose food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry, consists of staple food items for home preparation and consumption, such as meat, poultry, fish, bread, cereals, vegetables, fruits, dairy products, and the like, but not including accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices, (2) an establishment, organization, program, or group living arrangement referred to in subsections (g)(3), (4), (5), (7), (8), and (9)[8] of this section, (3) a store purveying the hunting and fishing equipment described in subsection (g)(6) of this section, and (4) any private nonprofit cooperative food purchasing venture, including those in which the members pay for food purchased prior to the receipt of such food.

(l) "Secretary" means the Secretary of Agriculture.

(m) "State" means the fifty States, the District of Columbia, Guam, the Virgin Islands of the United States, and the reservations of an Indian tribe whose tribal organization meets the requirements of this Act for participation as a State agency.

(n) "State agency" means (1) the agency of State government, including the local offices thereof, which has the responsibility for the administration of the federally aided public assistance programs within such State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs, and (2) the tribal organization of an Indian tribe determined by the Secretary to be capable of effectively administering a food distribution program under section 4(b) of this Act or a food stamp program under section 11(d) of this Act.

(o) "Thrifty food plan" means the diet required to feed a family of four persons consisting of a man and a woman twenty through fifty, a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall (1) make household-size adjustments (based on the unrounded cost of such diet) taking into account economies of scale, (2) make cost adjustments in the thrifty food plan for

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[7] P.L. 99-570, §11002(b), inserted "residents of public or private nonprofit shelters for individuals who do not reside in permanent dwellings or have no fixed mailing addresses, who are otherwise eligible for coupons,", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[8] P.L. 99-570, §11002(c), struck out "and (8)" and substituted "(8), and (9)", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

Hawaii and the urban and rural parts of Alaska to reflect the cost of food in Hawaii and urban and rural Alaska, (3) make cost adjustments in the separate thrifty food plans for Guam, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia, (4) through January 1, 1980, adjust the cost of such diet every January 1 and July 1 to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the six months ending the preceding September 30 and March 31, respectively, (5) on January 1, 1981, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding September 30, (6) on October 1, 1982, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twenty-one months ending June 30, 1982, reduce the cost of such diet by 1 per centun[9], and round the result to the nearest lower dollar increment for each household size, (7) on October 1, 1983, and October 1, 1984, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30, reduce the cost of such diet by 1 per centum, and round the result to the nearest lower dollar increment for each household size,[10] (8) on October 1, 1985, and each October 1 thereafter through October 1, 1987[11], adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30 and round the result to the nearest lower dollar increment for each household size, (9) on October 1, 1988, adjust the cost of such diet to reflect 100.65 percent of the cost of the thrifty food plan in the preceding June, and round the result to the nearest lower dollar increment for each household size, (10) on October 1, 1989, adjust the cost of such diet to reflect 102.05 percent of the cost, in the preceding June (without regard to the adjustment made under clause (9)), of the then most recent thrifty food plan as determined by the Secretary or the cost of the thrifty food plan in effect on the date of enactment of the Hunger Prevention Act of 1988, whichever is greater, and round the result to the nearest lower dollar increment for each household size, and (11) on October 1, 1990, and each October 1 thereafter, adjust the cost of such diet to reflect 103 percent of the cost, in the preceding June (without regard to any previous adjustment made under clause (9), (10), or this clause), of the then most recent thrifty food plan as determined by the Secretary or the cost of the thrifty food plan in effect on the date of enactment of the Hunger Prevention Act of 1988, whichever is greater, and round the result to the nearest lower dollar increment for each household size.[12]

(p) "Tribal organization" means the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as the term "Indian tribe" is defined in the Indian Self-Determination Act (25 U.S.C. 450b(b)), as well as any Indian tribe, band, or community holding a treaty with a State government.

(q) "Allowable medical expenses" means expenditures for (1) medical and dental care, (2) hospitalization or nursing care (including hospitalization or nursing care of an individual who was a household member immediately prior to entering a hospital or nursing home), (3) prescription drugs when prescribed by a licensed practitioner authorized under State law and over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional, (4) health and hospitalization insurance policies (excluding the costs of health and accident or income maintenance policies), (5) medicare premiums related to coverage under title XVIII of the Social Security Act, (6) dentures, hearing aids, and prosthetics (including the costs of securing and maintaining a seeing eye dog), (7) eye glasses prescribed by a physician skilled in eye disease or by an optometrist, (8) reasonable costs of transportation necessary to secure medical treatment or services, and (9) maintaining an attendant, homemaker, home health aide, housekeeper, or child care services due to age, infirmity, or illness.

(r) "Elderly or disabled member" means a member of a household who—

(1) is sixty years of age or older;

(2)(A) receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or Federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note), or

(B) receives Federally or State administered supplemental assistance of the type described in section 1616(a) of the Social Security Act (42 U.S.C. 1382e(a)), interim assistance pending receipt of supplemental security income, disability-related medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et

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[9]As in original. Possibly should be "per centum".
[10]P.L. 100-435, §120(1), struck out "and".
[11]P.L. 100-435, §120(2), inserted "through October 1, 1987".
[12]P.L. 100-435, §120(3), struck out ": *Provided*, That the periods upon which such adjustments are based shall be subject to revision by Act of Congress." and substituted clauses (9), (10), and (11).

seq.), or disability-based State general assistance benefits, if the Secretary determines that such benefits are conditioned on meeting disability or blindness criteria at least as stringent as those used under title XVI of the Social Security Act;[13]

(3) receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act (42 U.S.C. 301 et seq.) or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i));

(4) is a veteran who—

(A) has a service-connected or non-service-connected disability which is rated as total under title 38, United States Code; or

(B) is considered in need of regular aid and attendance or permanently housebound under such title;

(5) is a surviving spouse of a veteran and—

(A) is considered in need of regular aid and attendance or permanently housebound under title 38, United States Code; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i));

(6) is a child of a veteran and—

(A) is considered permanently incapable of self-support under section 414 of title 38, United States Code; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i)); or

(7) is an individual receiving an annuity under section 2(a)(1)(iv) or 2(a)(1)(v) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(a)(1)(iv) or 231a(a)(1)(v)), if the individual's service as an employee under the Railroad Retirement Act of 1974, after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act, and if an application for disability benefits had been filed.

(s) "Homeless individual" means—

(1) an individual who lacks a fixed and regular nighttime residence; or

(2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(B) an institution that provides a temporary residence for individuals intended to be institutionalized;

(C) a temporary accommodation in the residence of another individual; or

(D) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.[14]

ESTABLISHMENT OF THE FOOD STAMP PROGRAM

SEC. 4. [7 U.S.C. 2013] (a) Subject to the availability of funds appropriated under section 18 of this Act, the Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this Act. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation in the food stamp program. Coupons issued and used as provided in this Act shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

(b) Distribution of commodities, with or without the food stamp program, shall be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization. In the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for such distribution, except that, if the Secretary determines that the tribal organization is capable of effectively and efficiently

[13] P.L. 100-435, §350, amended paragraph (2) in it entirety.
[14] P.L. 100-77, §801, added subsection (s).

administering such distribution, then such tribal organizations shall administer such distribution: *Provided*, That the Secretary shall not approve any plan for such distribution which permits any household on any Indian reservation to participate simultaneously in the food stamp program and the distribution of federally donated foods. The Secretary is authorized to pay such amounts for administrative costs of such distribution on Indian reservations as the Secretary finds necessary for effective administration of such distribution by a State agency or tribal organization.

(c) The Secretary shall issue such regulations consistent with this Act as the Secretary deems necessary or appropriate for the effective and efficient administration of the food stamp program and shall promulgate all such regulations in accordance with the procedures set forth in section 553 of title 5 of the United States Code. In addition, prior to issuing any regulation, the Secretary shall provide the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation with a detailed statement justifying it.

ELIGIBLE HOUSEHOLDS

SEC. 5. [7 U.S.C. 2014] (a) Participation in the food stamp program shall be limited to those households whose incomes and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Notwithstanding any other provisions of this Act except sections 6(b), 6(d)(2), and 6(g) and the third sentence of section 3(i), and [15] beginning on the date of the enactment of the Food Security Act of 1985[16], households in which each member receives benefits under a State plan approved under part A of title IV of the Social Security Act, supplemental security income benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act, shall be eligible to participate in the food stamp program. Assistance under this program shall be furnished to all eligible households who make application for such participation.

(b) The Secretary shall establish uniform national standards of eligibility (other than the income standards for Alaska, Hawaii, Guam, and the Virgin Islands of the United States established in accordance with subsections (c) and (e) of this section) for participation by households in the food stamp program in accordance with the provisions of this section. No plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary, and no State agency shall impose any other standards of eligibility as a condition for participating in the program.

(c) The income standards of eligibility shall be adjusted each October 1 and[17] shall provide that a household shall be ineligible to participate in the food stamp program if—

(1) the household's income (after the exclusions and deductions provided for in subsections (d) and (e)) exceeds the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), for the forty-eight contiguous States and the District of Columbia, Alaska, Hawaii, the Virgin Islands of the United States, and Guam, respectively; and

(2) in the case of a household that does not include an elderly or disabled member, the household's income (after the exclusions provided for in subsection (d) but before the deductions provided for in subsection (e)) exceeds such poverty line by more than 30 per centum.

In no event shall the standards of eligibility for the Virgin Islands of the United States or Guam exceed those in the forty-eight contiguous States.

(d) Household income for purposes of the food stamp program shall include all income from whatever source excluding only (1) any gain or benefit which is not in the form of money payable directly to a household (not withstanding its conversion in whole or in part to direct payments to households pursuant to any demonstration project carried out or authorized under Federal law including demonstraton projects created by the waiver of provisions of Federal law)[18],[19] (2) any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter, subject to modification by the Secretary in light of section 5(f) of this Act, (3) all educational loans on which payment

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[15] P.L. 100-435, §201(1), struck out "during the period".
[16] P.L. 100-435, §201(2), struck out "and ending on September 30, 1989".
[17] P.L. 100-77, §803(a), inserted "shall be adjusted each October 1 and".
[18] P.L. 100-435, §340(2), inserted "(notwithstanding its conversion in whole or in part to direct payments to households pursuant to any demonstration project carried out or authorized under Federal law including demonstraton projects created by the waiver of provisions of Federal law)".
[19] P.L. 100-435, §340(1), struck out "and except as provided in subsection (k),". Executed as if "and" was not included in the stricken material.

is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of post-secondary education or school for the handicapped, and to the extent loans include any origination fees and insurance premiums, (4) all loans other than educational loans on which repayment is deferred, (5) reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household: *Provided*, That no portion of benefits provided under title IV-A of the Social Security Act, to the extent it is attributable to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education, or training program initiated under such title after the date of enactment of the Hunger Prevention Act of 1988)[20], no portion of any non-Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like that are provided for living expenses, and no portion of any Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees, shall be considered such reimbursement, (6) moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member, (7) income earned by a child who is a member of the household, who is a student, and who has not attained his eighteenth birthday, (8) moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds, rebates, or credits, cash donations based on need that are received from one or more private nonprofit charitable organizations, but not in excess of $300 in the aggregate in a quarter,[21] retroactive lump-sum social security or railroad retirement pension payments and retroactive lump-sum insurance settlements: *Provided*, That such payments shall be counted as resources, unless specifically excluded by other laws, (9) the cost of producing self-employed income, but household income that otherwise is included under this subsection shall be reduced by the extent that the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, and[22] (10) any income that any other Federal law specifically excludes from consideration as income for purposes of determining eligibility for the food stamp program except as otherwise provided in subsection (k) of this section, (11) any payments or allowances made for the purpose of providing energy assistance[23] (A) any Federal law or[24] (B) under[25] any State or local laws[26], designated by the State or local legislative body authorizing such payments or allowances as energy assistance, and determined by the Secretary to be calculated as if provided by the State or local government involved on a seasonal basis for an aggregate period not to exceed six months in any year even if such payments or allowances (including tax credits) are not provided on a seasonal basis because it would be administratively infeasible or impracticable to do so, (12) through September 30 of any fiscal year, any increase in income attributable to a cost-of-living adjustment made on or after July 1 of such fiscal year under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq.), section 3(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(1)), or section 3112 of title 38, United States Code, if the household was certified as eligible to participate in the food stamp program or received an allotment in the month immediately preceding the first month in which the adjustment was effective,[27] (13) at the option of a State agency and subject to subsection (m), child support payments that are excluded under section 402(a)(8)(A)(vi) of the Social Security Act (42 U.S.C. 602(a)(8)(A)(vi)), (14) any payment made to the household under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit)[28], and (15) any payment made to the household under section 6(d)(4)(I) for work related expenses or for dependent care[29].

(e) In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household, except that households in Alaska, Hawaii, Guam, and the Virgin Islands of the United States shall be allowed a

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[20] P.L. 100-435, §404(f), inserted "(except for payments or reimbursements for such expenses made under an employment, education, or training program initiated under such title after the date of enactment of the Hunger Prevention Act of 1988)".

[21] P.L. 100-232, §2(a)(1), inserted "cash donations based on need that are received from one or more private nonprofit charitable organizations, but not in excess of $300 in the aggregate in a quarter,".

[22] As in original. The "and" before "(10)" should be stricken.

[23] P.L. 100-435, §343(1), struck out "under" and substituted "for the purpose of providing energy assistance".

[24] P.L. 100-435, §343(2), amended subparagraph (A) in its entirety.

[25] P.L. 100-435, §343(3)(A), inserted "under".

[26] P.L. 100-435, §343(3)(B), struck out "for the purpose of providing energy assistance".

[27] P.L. 100-435, §402(1), struck out "and".

[28] P.L. 100-435, §402(2), added a comma and paragraph (14).

[29] P.L. 100-435, §403(a), inserted ", and" and paragraph (15).

standard deduction of $145, $120, $170, and $75, respectively. Such standard deductions shall be adjusted (1) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food and the homeowners' costs and maintenance and repair component of shelter costs, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (2) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30,[20] (3) on October 1, 1985, and October 1, 1986[21], to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30, and (4) on October 1, 1987, and each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food, for the twelve months ending the preceding June 30[22]. All households with earned income shall be allowed an additional deduction of 20 per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses, except that such additional deduction shall not be allowed with respect to earned income that a household willfully or fraudulently fails (as proven in a proceeding provided for in section 6(b)) to report in a timely manner[23]. Households, other than those households containing an elderly or disabled member, shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party and expenses that are paid under section 6(d)(4)(I) for dependent care[24], to (1) a dependent care deduction, the maximum allowable level of which shall be $160 a month for each dependent[25], for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment and (2) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed: *Provided*, That the amount of such excess shelter expense deduction shall not exceed $164 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States $285, $234, $199, and $121 a month, respectively, adjusted on October 1, 1988, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter[26], fuel, and utilities components of housing costs in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the twelve months ending the preceding June 30. In computing the excess shelter expense deduction under clause (2) of the preceding sentence, a State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary, except that a State agency may use an allowance which does not fluctuate within a year to reflect seasonal variations. An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense, as the case may be, or does incur a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households, with regard to such expense, only for excess utility costs. No such allowance may be used for a household that shares such expense with, and lives with, another individual not participating in the food stamp program, another household participating in the food stamp program, or both, unless the allowance is prorated between the household and the other individual, household, or both. If a State agency elects to use a standard utility allowance that reflects heating or cooling costs, it shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) or other similar energy assistance program, provided that the household still incurs out-of-

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[20] P.L. 100-77, §804(a)(1), struck out "and".

[21] P.L. 100-77, §804(a)(2), struck out "each October 1 thereafter" and substituted "October 1, 1986".

[22] P.L. 100-77, §804(a)(3), inserted ", and" and paragraph (4).

[23] P.L. 100-77, §805(a), inserted ", except that such additional deduction shall not be allowed with respect to earned income that a household willfully or fraudulently fails (as proven in a proceeding provided for in section 6(b)) to report in a timely manner".

[24] P.L. 100-435, §403(b)(1), inserted "and expenses that are paid under section 6(d)(4)(I) for dependent care".

[25] P.L. 100-435, §403(b)(2), inserted "for each dependent".

[26] P.L. 100-77, §806(a), struck out "$147 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $256, $210, $179, and $109 a month, respectively, adjusted on October 1, 1986, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs)" and substituted "$164 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States $285, $234, $199, and $121 a month, respectively, adjusted on October 1, 1988, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter".

pocket heating or cooling expenses. A State agency may use a separate standard utility allowance for households on behalf of which such payment is made, but may not be required to do so. A State agency not electing to use a separate allowance, and making a single standard utility allowance available to households incurring heating or cooling expenses (other than households described in the sixth sentence of this subsection) may not be required to reduce such allowance due to the provision (direct or indirect) of assistance under the Low-Income Home Energy Assistance Act of 1981. For purposes of the food stamp program, assistance provided under the Low-Income Home Energy Assistance Act of 1981 shall be considered to be prorated over the entire heating or cooling season for which it was provided. A State agency shall allow a household to switch between any standard utility allowance and a deduction based on its actual utility costs at the end of any certification period and up to one additional time during each twelve-month period. Households containing an elderly or disabled member shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to—

(A) an excess medical expense deduction for that portion of the actual cost of allowable medical expenses, incurred by elderly or disabled members, exclusive of special diets, that exceed $35 a month;

(B) a dependent care deduction, the maximum allowable level of which shall be the same as that contained in clause (1) of the fourth sentence of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education that is preparatory for employment; and

(C) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed.[37]

State agencies shall offer eligible households a method of claiming a deduction for recurring medical expenses that are initially verified under the excess medical expense deduction provided for in subparagraph (A), in lieu of submitting information or verification on actual expenses on a monthly basis.[38] The method described in the preceding sentence shall be designed to minimize the administrative burden for eligible elderly and disabled household members choosing to deduct their recurrent medical expenses pursuant to such method.[39]

(f)(1)(A) Household income for those households that, by contract for other than an hourly or piecework basis or by self-employment, derive their annual income in a period of time shorter than one year shall be calculated by averaging such income over a twelve-month period. Notwithstanding the preceding sentence, household income resulting from the self-employment of a member in a farming operation, who derives income from such farming operation and who has irregular expenses to produce such income, may, at the option of the household, be calculated by averaging such income and expenses over a 12-month period.[40] Notwithstanding the first[41] sentence, if the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business earnings, the State agency shall calculate the self-employment income based on anticipated earnings.

(B) Household income for those households that receive nonexcluded income of the type described in subsection (d)(3) of this section shall be calculated by averaging such income over the period for which it is received.

(2)(A) Households not required to submit monthly reports of their income and household circumstances under section 6(c)(1) shall have their income calculated on a prospective basis, as provided in paragraph (3)(A).

(B) Households required to submit monthly reports of their income and household circumstances under section 6(c)(1) shall have their income calculated on a retrospective basis, as provided in paragraph (3)(B), except that in the case of the first month, or at the option of the State the first and second months, in a continuous period in which a household is certified, the State agency shall determine the amount of benefits on the basis of the household's income and other relevant circumstances in such first or second month.[42]

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[37] See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2605(f), for calculating the excess shelter expense deduction and/or standard utility allowance, p. 737.
[38] P.L. 100-435, §351(2), added this sentence.
[39] See footnote 38.
[40] P.L. 100-435, §341(2), added this sentence.
[41] P.L. 100-435, §341(1), struck out "preceding" and substituted "first".
[42] P.L. 100-435, §202(a), amended paragraph (2) in its entirety.

(3)(A) Calculation of household income on a prospective basis is the calculation of income on the basis of the income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined. Such calculation shall be made in accordance with regulations prescribed by the Secretary which shall provide for taking into account both the income reasonably anticipated to be received by the household during the period for which eligibility or benefits are being determined and the income received by the household during the preceding thirty days.

(B) Calculation of household income on a retrospective basis is the calculation of income for the period for which eligibility or benefits are being determined on the basis of income received in a previous period. Such calculation shall be made in accordance with regulations prescribed by the Secretary which may provide for the determination of eligibility on a prospective basis in some or all cases in which benefits are calculated under this paragraph. Such regulations shall provide for supplementing the initial allotments of newly applying households in those cases in which the determination of income under this paragraph causes serious hardship.

(4) In promulgating regulations under this subsection, the Secretary shall consult with the Secretary of Health and Human Services in order to assure that, to the extent feasible and consistent with the purposes of this Act and the Social Security Act, the income of households receiving benefits under this Act and title IV-A of the Social Security Act is calculated on a comparable basis under the two Acts. The Secretary is authorized, upon the request of a State agency, to waive any of the provisions of this subsection (except the provisions of paragraph (2)(A)) to the extent necessary to permit the State agency to calculate income for purposes of this Act on the same basis that income is calculated under title IV-A of the Social Security Act in that State.

(g) The Secretary shall prescribe the types and allowable amounts of financial resources (liquid and nonliquid assets) an eligible household may own, and shall, in so doing, assure that a household otherwise eligible to participate in the food stamp program will not be eligible to participate if its resources exceed $2,000, or, in the case of a household which consists of or includes a member who is 60 years of age or older, if its resources exceed $3,000. The Secretary shall, in prescribing inclusions in, and exclusions from, financial resources, follow the regulations in force as of June 1, 1982 (other than those relating to licensed vehicles and inaccessible resources), and shall, in addition, include in financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, any licensed vehicle (other than one used to produce earned income or that is necessary for transportation of a physically disabled household member and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle) used for household transportation or used to obtain or continue employment to the extent that the fair market value of any such vehicle exceeds $4,500, and, regardless of whether there is a penalty for early withdrawal, any savings or retirement accounts (including individual accounts). The Secretary shall exclude from financial resources the value of a burial plot for each member of a household. In the case of farm property (including land, equipment, and supplies) that is essential to the self-employment of a household member in a farming operation, the Secretary shall exclude from financial resources the value of such property until the expiration of the 1-year period beginning on the date such member ceases to be self-employed in farming.[43]

(h)(1) The Secretary shall, after consultation with the official empowered to exercise the authority provided for by sections 402 and 502 of the Disaster Relief and Emergency Assistance Act[44], establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of title 5 of the United States Code.

(2) The Secretary shall—

(A) establish a Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and the regular food stamp program in the disaster area; and

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[43]P.L. 100-435, §342, added this sentence.

[44]P.L. 100-707, §109(d), struck out "section 302(a) of the Disaster Relief Act of 1974" and substituted "sections 402 and 502 of the Disaster Relief and Emergency Assistance Act".

(B) if the Secretary, in the Secretary's discretion, determines that it is cost-effective to send members of the Task Force to the disaster area, the Secretary shall send them to such area as soon as possible after the disaster occurs to provide direct assistance to State and local officials.

(i)(1) For purposes of determining eligibility for and the amount of benefits under this Act for an individual who is an alien as described in section 6(f)(2)(B) of this Act, the income and resources of any person who as a sponsor of such individual's entry into the United States executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse if such spouse is living with the sponsor, shall be deemed to be the income and resources of such individual for a period of three years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(2)(A) The amount of income of a sponsor, and the sponsor's spouse if living with the sponsor, which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(i) the total yearly rate of earned and unearned income of such sponsor, and such sponsor's spouse if such spouse is living with the sponsor, shall be determined for such year under rules prescribed by the Secretary;

(ii) the amount determined under clause (i) of this subparagraph shall be reduced by an amount equal to the income eligibility standard as determined under section 5(c) of this Act for a household equal in size to the sponsor, the sponsor's spouse if living with the sponsor, and any persons dependent upon or receiving support from the sponsor or the sponsor's spouse if the spouse is living with the sponsor; and

(iii) the monthly income attributed to such alien shall be one-twelfth of the amount calculated under clause (ii) of this subparagraph.

(B) The amount of resources of a sponsor, and the sponsor's spouse if living with the sponsor, which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(i) the total amount of the resources of such sponsor and such sponsor's spouse if such spouse is living with the sponsor shall be determined under rules prescribed by the Secretary;

(ii) the amount determined under clause (i) of this subparagraph shall be reduced by $1,500; and

(iii) the resources determined under clause (ii) of this subparagraph shall be deemed to be resources of such alien in addition to any resources of such alien.

(C)(i) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this Act, be required to provide to the State agency such information and documentation with respect to the alien's sponsor and sponsor's spouse as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide such information and documentation which such alien or the sponsor provided in support of such alien's immigration application as the State agency may request.

(ii) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Secretary, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(D) Any sponsor of an alien, and such alien, shall be jointly and severably[45] liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid shall be recovered in accordance with the provisions of section 13(b)(2) of this Act.

(E) The provisions of this subsection shall not apply with respect to any alien who is a member of the sponsor's household, as defined in section 3(i) of this Act.

(j) Notwithstanding subsections (a) through (i), a State agency may consider a household in which all members of the household receive benefits under a State plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and

[45]As in original.

whose income does not exceed the applicable income standard of eligibility described in subsection (c)(2) to have satisfied the resource limitations prescribed under subsection (g).[46]

(k)(1) For purposes of subsection (d)(1), except as provided in paragraph (2), assistance provided to a third party on behalf of a household by a State or local government shall be considered money payable directly to the household if the assistance is provided in lieu of—

(A) a regular benefit payable to the household for living expenses under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(B) a benefit payable to the household for living expenses under—

(i) a State or local general assistance program; or

(ii) another basic assistance program comparable to general assistance (as determined by the Secretary).

(2) Paragraph (1) shall not apply to—

(A) medical assistance;

(B) child care assistance;

(C) energy assistance;

(D) assistance provided by a State or local housing authority;[47]

(E) emergency assistance for migrant or seasonal farmworker households during the period such households are in the job stream,[48]

(F)[49] housing assistance payments made to a third party on behalf of a household residing in temporary housing if the temporary housing unit provided for the household as a result of such assistance payments lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption; or[50]

(G)[51] emergency and special assistance, to the extent excluded in regulations prescribed by the Secretary.

(3) For purposes of subsection (d)(1), educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like that are provided to a third party on behalf of a household for living expenses shall be treated as money payable directly to the household.

(l) Notwithstanding section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)), earnings to individuals participating in on-the-job training programs under section 204(5) of the Job Training Partnership Act shall be considered earned income for purposes of the food stamp program, except for dependents less than 19 years of age.

(m) If a State agency excludes payments from income for purposes of the food stamp program under subsection (d)(13), such State agency shall pay to the Federal Government, in a manner prescribed by the Secretary, the cost of any additional benefits provided to households in such State that arise under such program as the result of such exclusion.

ELIGIBILITY DISQUALIFICATIONS

SEC. 6. [7 U.S.C. 2015] (a) In addition to meeting the standards of eligibility prescribed in section 5 of this Act, households and individuals who are members of eligible households must also meet and comply with the specific requirements of this section to be eligible for participation in the food stamp program.

(b)(1) Any person who has been found by any State or Federal court or administrative agency to have intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes a violation of this Act, the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing coupons or authorization cards shall, immediately upon the rendering of such determination, become ineligible for further participation in the program—

(i) for a period of six months upon the first occasion of any such determination;

(ii) for a period of one year upon the second occasion of any such determination; and

(iii) permanently upon the third occasion of any such determination.

During the period of such ineligibility, no household shall receive increased benefits under this Act as the result of a member of such household having been disqualified under this subsection.

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[46] P.L. 99-198, §1507(a)(2), states that during the period beginning December 23, 1985, and ending on September 30, 1989, this subsection shall not apply.

[47] P.L. 100-77, §807(a)(1), struck out "or".

[48] P.L. 100-387, §501(a)(3), added this subparagraph (E).

[49] P.L. 100-387, §501(a)(1), redesignated this subparagraph as subparagraph (F).

[50] P.L. 100-77, §807(a)(3), added this subparagraph.

[51] P.L. 100-77, §807(a)(2), redesignated this subparagraph as subparagraph (F).
P.L. 100-387, §501(a)(2), redesignated this subparagraph as subparagraph (G).

(2) Each State agency shall proceed against an individual alleged to have engaged in such activity either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, or by referring such matters to appropriate authorities for civil or criminal action in a court of law.

(3) Such periods of ineligibility as are provided for in paragraph (1) of this subsection shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the ineligibility is based is subsequently reversed by a court of appropriate jurisdiction, but in no event shall the period of ineligibility be subject to review.

(4) The Secretary shall prescribe such regulations as the Secretary may deem appropriate to ensure that information concerning any such determination with respect to a specific individual is forwarded to the Office of the Secretary by any appropriate State or Federal entity for the use of the Secretary in administering the provisions of this section. No State shall withhold such information from the Secretary or the Secretary's designee for any reason whatsoever.

(c) No household shall be eligible to participate in the food stamp program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility.

(1)(A) A State agency may require certain categories of households to file periodic reports of income and household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may not require periodic reporting by—

(i) migrant or seasonal farmworker households;

(ii) households in which all members are homeless individuals; or

(iii) households that have no earned income and in which all adult members are elderly or disabled.

(B) Each household that is not required to file such periodic reports on a monthly basis shall be required to report or cause to be reported to the State agency changes in income or household circumstances that the Secretary considers necessary to assure accurate eligibility and benefit determinations.[52]

(2) Any household required to file a periodic report under paragraph (1) of this subsection shall, (A) if it is eligible to participate and has filed a timely and complete report, receive its allotment, based on the reported information for a given month, within thirty days of the end of that month unless the Secretary determines that a longer period of time is necessary, (B) have available special procedures that permit the filing of the required information in the event all adult members of the household are mentally or physically handicapped or lacking in reading or writing skills to such a degree as to be unable to fill out the required forms, (C) have a reasonable period of time after the close of the month in which to file their reports on forms approved by the Secretary,[53] (D) be afforded prompt notice of failure to file any report timely or completely, and given a reasonable opportunity to cure that failure (with any applicable time requirements extended accordingly) and to exercise its rights under section 11(e)(10) of this Act, and (E) be provided each month (or other applicable period) with an appropriate, simple form for making the required reports of the household together with clear instructions explaining how to complete the form and the rights and responsibilities of the household under any periodic reporting system[54].

(3) Reports required to be filed under paragraph (1) of this subsection shall be considered complete if, in accordance with standards prescribed by the Secretary, they contain sufficient information to enable the State agency to determine household eligibility and allotment levels. All report forms, including those related to periodic reports of circumstances, shall contain a description, in understandable terms in prominent and bold face lettering, of the appropriate civil and criminal provisions dealing with violations of this Act including the prescribed penalties. Reports required to be filed monthly under paragraph (1) shall be the sole reporting requirement for subject matter included in such reports. In promulgating regulations implementing these reporting requirements, the Secretary shall consult with the Secretary of Health and Human Services, and, wherever feasible, households that receive assistance under title IV-A of the Social Security Act and that are required to file comparable reports under that Act shall be provided the opportunity to file reports at the same time for purposes of both Acts.

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[52] P.L. 100-435, §202(b), amended paragraph (1) in its entirety.
[53] P.L. 100-435, §202(c)(1), struck out "and".
[54] P.L. 100-435, §202(c)(2), inserted ", and" and subparagraph (E).

(4) Any household that fails to submit periodic reports required by paragraph (1) shall not receive an allotment for the payment period to which the unsubmitted report applies until such report is submitted.

(5) The Secretary is authorized, upon the request of a State agency, to waive any provisions of this subsection (except the provisions of the first sentence of paragraph (1) which relate to households which are not required to file periodic reports) to the extent necessary to permit the State agency to establish periodic reporting requirements for purposes of this Act which are similar to the periodic reporting requirements established under the State plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in that State.

(d)(1) Unless otherwise exempted by the provisions of paragraph (d)(2) of this subsection, (A) no person shall be eligible to participate in the food stamp program who is[55] physically and mentally fit person between the ages of sixteen and sixty who (i) refuses at the time of application and once every twelve months thereafter to register for employment in a manner determined by the Secretary; (ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under paragraph (4), including any reasonable employment requirements as are prescribed by the State agency in accordance with paragraph (4), and the period of ineligibility shall be two months; (iii) refuses without good cause (including the lack of adequate child care for children above the age of five and under the age of twelve) to accept an offer of employment at a wage not less than the higher of either the applicable State or Federal minimum wage, or 80 per centum of the wage that would have governed had the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), been applicable to the offer of employment, and at a site or plant not then subject to a strike or lockout; and (B) no household shall be eligible to participate in the food stamp program (i) if the head of the household is a physically and mentally fit person between the ages of sixteen and sixty and such individual refuses to do any of those acts described in clause (A) of this sentence, or (ii) if the head of the household voluntarily quits any job without good cause, but, in such case, the period of ineligibility shall be ninety days. An employee of the Federal Government, or of a State or political subdivision of a State, who engaged in a strike against the Federal Government, a State or political subdivision of a State and is dismissed from his job because of his participation in the strike shall be considered to have voluntarily quit such job without good cause. Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated. If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to sanction for such violation and, if it is otherwise eligible, may resume participation in the food stamp program, but any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility.

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under title IV of the Social Security Act, as amended (42 U.S.C. 602), or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject that is comparable to a requirement of paragraph (1) shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis.

(3) Notwithstanding any other provision of law, a household shall not participate in the food stamp program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 501(2) of the Labor Management Relations Act, 1947, because of a labor dispute (other than a lockout) as defined in section 2(9) of the

[55] As in original. Possibly should reinstate "a".

National Labor Relations Act: *Provided*, That a household shall not lose its eligibility to participate in the food stamp program as a result of one of its members going on strike if the household was eligible for food stamps immediately prior to such strike, however, such household shall not receive an increased allotment as the result of a decrease in the income of the striking member or members of the household: *Provided further*, That such ineligibility shall not apply to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout.

(4)(A) Not later than April 1, 1987, each State agency shall implement an employment and training program designed by the State agency and approved by the Secretary for the purpose of assisting members of households participating in the food stamp program in gaining skills, training, or experience that will increase their ability to obtain regular employment.

(B) For purposes of this Act, an "employment and training program" means a program that contains one or more of the following components:

(i) Job search programs with terms and conditions comparable to those prescribed in subparagraphs (A) and (B) of section 402(a)(35) of part A of title IV of the Social Security Act, except that the State agency shall[56] retain the option to apply employment requirements prescribed under this clause to program applicants at the time of application.

(ii) Job search training programs that include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs, determined by the State agency to expand the job search abilities or employability of those subject to the program.

(iii) Workfare programs operated under section 20.

(iv) Programs designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. An employment or training experience program established under this clause shall—

(I) limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care;

(II) to the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(III) not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(IV) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) Educational programs or activities to improve basic skills or otherwise improve employability, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program under this paragraph.[57]

(vi)[58] As approved by the Secretary or the State under regulations issued by the Secretary,[59], other employment, educational and training[60] programs, projects, and experiments, such as a supported work program, aimed an[61] accomplishing the purpose of the employment and training program.

(C) The State agency may provide that participation in an employment and training program may supplement or supplant other employment-related requirements imposed on those subject to the program.

(D)(i) Each State agency may exempt from any requirement for participation in any program under this paragraph categories of household members to which the application of such participation requirement is impracticable as applied to such categories due to factors such as the availability of work opportunities and the cost-effectiveness of the employment requirements. In making such a determination, the

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[56] P.L. 100-435, §404(a)(1), struck out "have no obligation to incur costs exceeding $25 per participant per month, as provided in subparagraph (B)(vi), and the State agency shall".

[57] P.L. 100-435, §404(a)(4), added this clause (v).

[58] P.L. 100-435, §404(a)(3), redesignated clause (v) as clause (vi).

[59] P.L. 100-435, §404(a)(2)(A), inserted "or the State under regulations issued by the Secretary,". As in original. One comma should be stricken.

[60] P.L. 100-435, §404(a)(2)(B), inserted "employment, educational and training".

[61] As in original.

State agency may designate a category consisting of all such household members residing in a specific area of the State. Each State may exempt, with the approval of the Secretary, members of households that have participated in the food stamp program 30 days or less.

(ii) Each State agency may exempt from any requirement for participation individual household members not included in any category designated as exempt under clause (i) but with respect to whom such participation is impracticable because of personal circumstances such as lack of job readiness and employability, the remote location of work opportunities, and unavailability of child care.

(iii) Any exemption of a category or individual under this subparagraph shall be periodically evaluated to determine whether, on the basis of the factors used to make a determination under clauses[42] (i) or (ii), the exemption continues to be valid. Such evaluations shall occur no less often than at each certification or recertification in the case of exemptions under clause (ii).

(E) Each State agency shall establish requirements for participation by individuals not exempt under subparagraph (D) in one or more employment and training programs under this paragraph, including the extent to which any individual is required to participate. Such requirements may vary among participants.

(F)(i) The total hours of work in an employment and training program carried out under this paragraph required of members of a household, together with the hours of work of such members in any program carried out under section 20, in any month collectively may not exceed a number of hours equal to the household's allotment for such month divided by the higher of the applicable State minimum wage or Federal minimum hourly rate under the Fair Labor Standards Act of 1938.

(ii) The total hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in another program carried out under section 20 and any hours worked for compensation (in cash or in kind) in any other capacity, shall not exceed one hundred and twenty hours per month.

(G)(i) The State agency may operate any program component under this paragraph in which individuals elect to participate.

(ii) The State agency shall permit, to the extent it determines practicable, individuals not subject to requirements imposed under subparagraph (E) or who have complied, or are in the process of complying, with such requirements to participate in any program under this paragraph.

(H)(i) The Secretary shall issue regulations under which each State agency shall establish a conciliation procedure for the resolution of disputes involving the participation of an individual in the program.

(ii) Federal funds made available to a State agency for purposes of the component authorized under subparagraph (B)(v) shall not be used to supplant non-Federal funds used for existing services and activities that promote the purposes of this component.[43]

(I)(i) The State agency shall provide payments or reimbursements to participants in programs carried out under this paragraph, including individuals participating under subparagraph (G), for—

(I) the actual costs of transportation and other actual costs (other than dependent care costs), that are reasonably necessary and directly related to participation in the program, except that the State agency may limit such reimbursement to each participant to $25 per month; and

(II) the actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an individual in the program (other than an individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) in a local area where an employment, training, or education program under title IV of such Act is in operation or was in operation, on the date of enactment of the Hunger Prevention Act of 1988, but in no event shall such payment or reimbursements exceed $160 per dependent per month. Individuals subject to the program under this paragraph may not be required to participate if dependent care costs exceed $160 per dependent per month.

(ii) In lieu of providing reimbursements or payments for dependent care expenses under clause (i), a State agency may, at its option, arrange for dependent care through providers by the use of purchase of service contracts or vouchers or by providing vouchers to the household.

(iii) The value of any dependent care services provided for or arranged under clause (ii), or any amount received as a payment or reimbursement under clause (i), shall—

(I) not be treated as income for the purposes of any other Federal or federally assisted program that bases eligibility for, or the amount of benefits on, need; and

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[42] As in original.
[43] P.L. 100-435, §404(b)(2), added this subparagraph (H).

(II) not be claimed as an employment-related expense for the purposes of the credit provided under section 21 of the Internal Revenue Code of 1986.[64]

(J)[65] The Secretary shall promulgate guidelines that (i) enable State agencies, to the maximum extent practicable, to design and operate an employment and training program that is compatible and consistent with similar programs operated within the State, and (ii) ensure, to the maximum extent practicable, that employment and training programs are provided for Indians on reservations.

(K)[66](i) For any fiscal year, the Secretary shall establish performance standards for each State that, in the case of persons who are subject to employment requirements under this section and who are not exempt under subparagraph (D), designate the minimum percentages (not to exceed 50 percent through September 30, 1989) of such persons that State agencies shall place in programs under this paragraph. Such standards need not be uniform for all the States, but may vary among the several States. The Secretary shall consider the cost to the States in setting performance standards and the degree of participation in programs under this paragraph by exempt persons.

(ii) In making any determination as to whether a State agency has met a performance standard under clause (i), the Secretary shall—

(I) consider the extent to which persons have elected to participate in programs under this paragraph;

(II) consider such factors as placement in unsubsidized employment, increases in earnings, and reduction in the number of persons participating in the food stamp program; and

(III) consider other factors determined by the Secretary to be related to employment and training.

(iii) The Secretary shall vary the performance standards established under clause (i) according to differences in the characteristics of persons required to participate and the type of program to which the standard is applied.

(iv) The Secretary may delay establishing performance standards for up to 18 months after national implementation of the provisions of this paragraph, in order to base performance standards on State agency experience in implementing this paragraph.

(L)(i) The Secretary shall establish, in accordance with this subparagraph, performance standards that are applicable to employment and training programs carried out under this paragraph.

(ii) The performance standards referred to in clause (i) shall be developed by the Secretary after consultation with the Office of Technology Assessment, the Secretary of Labor, the Secretary of Health and Human Services, appropriate State officials designated for purposes of this clause by the chief executive officers of the States, other appropriate experts, and representatives of households participating in the food stamp program. Such performance standards (which shall be coordinated with the corresponding performance standards under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) and the performance standards under title IV of the Social Security Act (42 U.S.C. 601 et seq.), taking into consideration the differing characteristics of such households)—

(I) shall be measured by employment outcomes and shall be based on the degree of success that may reasonably be expected of States (in carrying out employment and training programs) in helping individuals to achieve self-sufficiency;

(II) shall take into account the extent to which persons have elected to participate in employment and training programs under this paragraph, job placement rates, wage rates, job retention rates, households ceasing to need benefits under this Act, and improvements in household members' educational levels;

(III) shall encourage States to serve those individuals who have greater barriers to employment and thus have greater difficulties in achieving self-sufficiency; and

(IV) shall include guidelines permitting appropriate variations that take into account the differing conditions (including unemployment rates and rates of elective participation under subparagraph (G) in employment and training programs under this paragraph) that may exist in different States.

(iii) Final measures for the performance standards referred to in clause (i) shall be published by the Secretary, after the consideration of public comments concerning the proposed measures for such performance standards, and implemented by the States not later than April 1, 1991.

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[64] P.L. 100-435, §404(b)(1), redesignated subparagraph (H) as subparagraph (I).
P.L. 100-435, §404(c), amended subparagraph (I) in its entirety.
[65] P.L. 100-435, §404(b)(1), redesignated subparagraph (I) as subparagraph (J).
[66] P.L. 100-435, §404(b)(1), redesignated subparagraph (J) as subparagraph (K).

(iv) The performance standards developed and issued under clause (ii) shall be varied in any State, to the extent permitted under clause (ii)(IV), to the extent necessary to take into account specific economic, geographic, and demographic factors in the State, the characteristics of the population to be served, and the types of services to be provided.

(v) The performance standards in effect under subparagraph (K) shall remain in effect during the period beginning on October 1, 1988, and ending on the date the Secretary implements the performance standards required to be issued under this subparagraph on which date the authority to issue such standards shall expire.

(vi) Not later than 180 days after the Secretary publishes the proposed measures for the performance standards under this subparagraph, the Office of Technology Assessment shall—

(I) develop model performance standards suitable for application to employment and training programs carried out under this subsection and that satisfy the criteria specified in this subparagraph;

(II) compare the standards developed under subclause (I) with the performance standards established under this subparagraph by the Secretary, and

(III) submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Secretary of Agriculture a report describing the results of the comparison required under subclause (II).[47]

(M)[48](i) The Secretary shall ensure that State agencies comply with the requirements of this paragraph and section 11(e)(22).

(ii) If the Secretary determines that a State agency has failed, without good cause, to comply with such a requirement, including any failure to meet a performance standard under subparagraph (J), the Secretary may withhold from such State, in accordance with section 16(a), (c), and (h), such funds as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14.

(N)[49] The facilities of the State public employment offices and agencies operating programs under the Job Training Partnership Act may be used to find employment and training opportunities for household members under the programs under this paragraph.

(e) No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household if he or she (1) is physically and mentally fit and is between the ages of eighteen and sixty, (2) is enrolled at least half time in an institution of higher education, or is an individual who is not assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act, and (3)(A) is not employed a minimum of twenty hours per week or does not participate in a federally financed work study program during the regular school year; (B) is not a parent with responsibility for the care of a dependent child under age six; (C) is not a parent with responsibility for the care of a dependent child above the age of five and under the age of twelve for whom adequate child care is not available; (D) is not receiving aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or (E) is not so enrolled as a result of participation in the work incentive program under title IV of the Social Security Act, as amended (42 U.S.C. 602).

(f) No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 8 U.S.C. 1101(a)(20)), excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; or (C) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (8 U.S.C. 1259); or (D) an alien who has qualified for conditional entry pursuant to sections 207 and 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158; or (E) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for

[47] P.L. 100-435, §404(d), added this subparagraph (L).
[48] P.L. 100-435, §404(b)(1), redesignated subparagraph (K) as subparagraph (M).
[49] P.L. 100-435, §404(b)(1), redesignated subparagraph (L) as subparagraph (N).

emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)); or (F) an alien within the United States as to whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act (8 U.S.C. 1253(h)). No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the food stamp program as a member of any household. The income (less a pro rata share) and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member.

(g) No individual who receives supplemental security income benefits under title XVI of the Social Security Act, State supplementary payments described in section 1616 of such Act, or payments of the type referred to in section 212(a) of Public Law 93-66, as amended, shall be considered to be a member of a household for any month, if, for such month, such individual resides in a State which provides State supplementary payments (1) of the type described in section 1616(a) of the Social Security Act and section 212(a) of Public Law 93-66, and (2) the level of which has been found by the Secretary of Health and Human Services to have been specifically increased so as to include the bonus value of food stamps.

(h) No household that knowingly transfers assets for the purpose of qualifying or attempting to qualify for the food stamp program shall be eligible to participate in the program for a period of up to one year from the date of discovery of the transfer.

ISSUANCE AND USE OF COUPONS

SEC. 7. [7 U.S.C. 2016] (a) Coupons shall be printed under such arrangements and in such denominations as may be determined by the Secretary to be necessary, and shall be issued only to households which have been duly certified as eligible to participate in the food stamp program.

(b) Coupons issued to eligible households shall be used by them only to purchase food in retail food stores which have been approved for participation in the food stamp program at prices prevailing in such stores: *Provided*, That nothing in this Act shall be construed as authorizing the Secretary to specify the prices at which food may be sold by wholesale food concerns or retail food stores: *Provided further*, That eligible households using coupons to purchase food may receive cash in change therefor so long as the cash received does not equal or exceed the value of the lowest coupon denomination issued.

(c) Coupons issued to eligible households shall be simple in design and shall include only such words or illustrations as are required to explain their purpose and define their denomination. The name of any public official shall not appear on such coupons.

(d) The Secretary shall develop an appropriate procedure for determining and monitoring the level of coupon inventories in the hands of coupon issuers for the purpose of providing that such inventories are at proper levels (taking into consideration the historical and projected volume of coupon distribution by such issuers). Such procedures shall provide that coupon inventories in the hands of such issuers are not in excess of the reasonable needs of such issuers taking into consideration the ease with which such coupon inventories may be resupplied. The Secretary shall require each coupon issuer at intervals prescribed by the Secretary, but not less often than monthly, to send to the Secretary or the Secretary's designee, which may include the State agency, a written report of the issuer's operations during such period. In addition to other information deemed by the Secretary to be appropriate, the Secretary shall require that the report contain an oath, or affirmation, signed by the coupon issuer, or in the case of a corporation or other entity not a natural person, by an appropriate official of the coupon issuer, certifying that the information contained in the report is true and correct to the best of such person's knowledge and belief.

(e) The Secretary shall prescribe appropriate procedures for the delivery of coupons to coupon issuers and for the subsequent controls to be placed over such coupons by coupon issuers in order to ensure adequate accountability.

(f) Notwithstanding any other provision of this Act, the State agency shall be strictly liable to the Secretary for any financial losses involved in the acceptance, storage and issuance of coupons, including any losses involving failure of a coupon issuer to comply with the requirements specified in section 11(e)(20), except that in the case of losses resulting from the issuance and replacement of authorizations for coupons and allotments which are sent through the mail, the State agency shall be liable to the Secretary to the extent prescribed in the regulations promulgated by the Secretary.

(g)(1) If the Secretary determines, in consultation with the Inspector General of the Department of Agriculture, that it would improve the integrity of the food stamp program, the Secretary shall require a State agency—

(A) to issue or deliver coupons using alternative methods, including an automatic data processing and information retrieval system; or

(B) to issue, in lieu of coupons, reusable documents to be used as part of an automatic data processing and information retrieval system and to be presented by, and returned to, recipients at retail food stores for the purpose of purchasing food.

(2) The cost of documents or systems that may be required pursuant to this subsection may not be imposed upon a retail food store participating in the food stamp program.

(h)[70] The State agency may implement a procedure for staggering the issuance of coupons to eligible households throughout the entire month: *Provided*, That the procedure ensures that, in the transition period from other issuance procedures, no eligible household experiences an interval between coupon issuances of more than 40 days, either through regular issuances by the State agency or through supplemental issuances.[71]

VALUE OF ALLOTMENT

SEC. 8. [7 U.S.C. 2017] (a) The value of the allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be equal to the cost to such households of the thrifty food plan reduced by an amount equal to 30 per centum of the household's income, as determined in accordance with section 5(d) and (e) of this Act, rounded to the nearest lower whole dollar: *Provided*, That for households of one and two persons the minimum allotment shall be $10 per month.

(b) The value of the allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of an allotment under this Act.

(c)(1)[72] The value of the allotment issued to any eligible household for the initial month or other initial period for which an allotment is issued shall have a value which bears the same ratio to the value of the allotment for a full month or other initial period for which the allotment is issued as the number of days (from the date of application) remaining in the month or other initial period for which the allotment is issued bears to the total number of days in the month or other initial period for which the allotment is issued, except that no allotment may be issued to a household for the initial month or period if the value of the allotment which such household would otherwise be eligible to receive under this subsection is less than $10. (2)[73] As used in this subsection, the term "initial month" means (A)[74] the first month for which an allotment is issued to a household,[75] (B)[76] the first month for which an allotment is issued to a household following any period which such household was not participating in the food stamp program under this Act after previous participation in such program, and (C)[77] in the case of a migrant or seasonal farmworker household, the first month for which allotment is issued to a household that applies following any period of more than 30 days in which such household was not participating in the food stamp program after previous participation in such program[78].

(3) An eligible household applying after the 15th day of the month shall receive, in lieu of its initial allotment and its regular allotment for the following month, an allotment that is the aggregate of the initial allotment and the first regular allotment, which shall be provided in accordance with paragraphs (3) and (9) of section 11(e).[79]

(d) A household against which a penalty has been imposed for an intentional failure to comply with a Federal, State, or local law relating to welfare or a public assistance program may not, for the duration of the penalty, receive an increased allotment as the result of a decrease in the household's income (as determined under sections 5(d) and 5(e)) to the extent that the decrease is the result of such penalty.

(e)(1) The Secretary may permit not more than five statewide projects (upon the request of a State) and not more than five projects in political subdivisions of States

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[70] P.L. 100-435, §203(b)(1), struck out "(1)".
[71] P.L. 100-435, §203(b)(2), repealed paragraph (2).
[72] P.L. 100-435, §203(a)(1), inserted "(1)".
[73] P.L. 100-435, §203(a)(1), redesignated the second sentence as paragraph (2).
[74] P.L. 100-435, §203(a)(2), struck out "(1)" and substituted "(A)".
[75] P.L. 100-387, §502(a)(1), struck out "and".
[76] P.L. 100-435, §203(a)(2), struck out "(2)" and substituted "(B)".
[77] P.L. 100-435, §203(a)(2), struck out "(3)" and substituted "(C)".
[78] P.L. 100-387, §502(a)(2), inserted ", and" and subparagraph (C) [as redesignated by P.L. 100-435, §203(a)(2)].
[79] P.L. 100-435, §203(a)(3), added paragraph (3).

(upon the request of a State or political subdivision) to operate a program under which a household shall be considered to have satisfied the application requirements prescribed under section 5(a) and the income and resource requirements prescribed under subsections (d) through (g) of section 5 if such household—

(A) includes one or more members who are recipients of—

(i) aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(ii) supplemental security income under title XVI of such Act (42 U.S.C. 1381 et seq.); or

(iii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(B) has an income that does not exceed the applicable income standard of eligibility described in section 5(c).

(2) Except as provided in paragraph (3), a State or political subdivision that elects to operate a program under this subsection shall base the value of an allotment provided to a household under subsection (a) on—

(A)(i) the size of the household; and

(ii)(I) benefits paid to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act; or

(II) the income standard of eligibility for medical assistance under title XIX of such Act; or

(B) at the option of the State or political subdivision, the standard of need for such size household under the programs referred to in clause (A)(ii).

(3) The Secretary shall adjust the value of allotments received by households under a program operated under this subsection to ensure that the average allotment by household size for households participating in such program and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment that would have been provided under this Act but for the operation of this subsection, for each category of households, respectively, in a State or political subdivision, for any period during which such program is in operation.

(4) The Secretary shall evaluate the impact of programs operated under this subsection on recipient households, administrative costs, and error rates.

(5) The administrative costs of such programs shall be shared in accordance with section 16.

(6) In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such programs, the processing of applications for, and determinations of eligibility to receive, food stamp benefits are simplified and are unified with the processing of applications for, and determinations of eligibility to receive, benefits under such titles of the Social Security Act (42 U.S.C. 601 et seq.).

APPROVAL OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 9. [7 U.S.C. 2018] (a) Regulations issued pursuant to this Act shall provide for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem coupons under the food stamp program and for the approval of those applicants whose participation will effectuate the purposes of the food stamp program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (1) the nature and extent of the food business conducted by the applicant; (2) the volume of coupon business which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; and (3) the business integrity and reputation of the applicant. Approval of an applicant shall be evidenced by the issuance to such applicant of a nontransferable certificate of approval.

(b)(1) No wholesale food concern may be authorized to accept and redeem coupons unless the Secretary determines that its participation is required for the effective and efficient operation of the food stamp program. In addition, no firm may be authorized to accept and redeem coupons as both a retail food store and as a wholesale food concern at the same time.

(2)(A) A buyer or transferee (other than a bona fide buyer or transferee) of a retail food store or wholesale food concern that has been disqualified under section 12(a) may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(B) A buyer or transferee may not, as a result of the sale or transfer of such store or concern, be required to furnish a bond under section 12(d).

(c) Regulations issued pursuant to this Act shall require an applicant retail food store or wholesale food concern to submit information which will permit a determination to be made as to whether such applicant qualifies, or continues to qualify, for approval under the provisions of this Act or the regulations issued pursuant to this Act. Regulations issued pursuant to this Act shall provide for safeguards which limit the use or disclosure of information obtained under the authority granted by this subsection to purposes directly connected with administration and enforcement of the provisions of this Act or the regulations issued pursuant to this Act, except that such information may be disclosed to and used by State agencies that administer the special supplemental food program for women, infants and children, authorized under section 17 of the Child Nutrition Act of 1966, for purposes of administering the provisions of that Act and the regulations issued under that Act. Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

(d) Any retail food store or wholesale food concern which has failed upon application to receive approval to participate in the food stamp program may obtain a hearing on such refusal as provided in section 14 of this Act.

(e) Approved retail food stores shall display a sign providing information on how persons may report abuses they have observed in the operation of the food stamp program.

(f) In those areas in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the operation of house-to-house trade routes damages the program's integrity, the Secretary shall limit the participation of house-to-house trade routes to those routes that are reasonably necessary to provide adequate access to households.

(g) In an area in which the Secretary, in consultation with the Inspector General of the Department of Agriculture, finds evidence that the participation of an establishment or shelter described in section 3(g)(9) damages the program's integrity, the Secretary shall limit the participation of such establishment or shelter in the food stamp program, unless the establishment or shelter is the only establishment or shelter serving the area.[80]

REDEMPTION OF COUPONS

SEC. 10. [7 U.S.C. 2019] Regulations issued pursuant to this Act shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or which are insured under the Federal Credit Union Act and have retail food stores or wholesale food concerns in their field of membership, with the cooperation of the Treasury Department, except that retail food stores defined in section 3(k)(4) of this Act shall be authorized to redeem their members' food coupons prior to receipt by the members of the food so purchased, and publicly operated community mental health centers or private nonprofit organizations or institutions which serve meals to narcotics addicts or alcoholics in drug addiction or alcoholic treatment and rehabilitation programs, public and private nonprofit shelters that prepare and serve meals for battered women and children, public or private nonprofit group living arrangements that serve meals to disabled or blind residents, and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses[81] shall not be authorized to redeem coupons through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the Federal Credit Union Act. No financial institution may impose on or collect from a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, other than any requirements relating to cancellation of coupons, for the presentation of coupons by financial institutions to the Federal Reserve banks.

ADMINISTRATION

SEC. 11. [7 U.S.C. 2020] (a) The State agency of each participating State shall assume responsibility for the certification of applicant households and for the issuance

[80] P.L. 99-570, §11002(d), added subsection (g), effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

[81] P.L. 99-570, §11002(e)(2), inserted ", and public or private nonprofit establishments, or public or private nonprofit shelters that feed individuals who do not reside in permanent dwellings and individuals who have no fixed mailing addresses", effective not later than April 1, 1987, and shall cease to be effective after September 30, 1990.

of coupons and the control and accountability thereof. There shall be kept such records as may be necessary to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for such period of time, not less than three years, as may be specified in the regulations issued pursuant to this Act.

[(b) Stricken.[82]]

(c) In the certification of applicant households for the food stamp program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political beliefs.

(d) The State agency (as defined in section 3(n)(1) of this Act) of each State desiring to participate in the food stamp program shall submit for approval a plan of operation specifying the manner in which such program will be conducted within the State in every political subdivision. The Secretary may not, as a part of the approval process for a plan of operation, require a State to submit for prior approval by the Secretary the State agency instructions to staff, interpretations of existing policy, State agency methods of administration, forms used by the State agency, or any materials, documents, memoranda, bulletins, or other matter, unless the State determines that the materials, documents, memoranda, bulletins, or other matter alter or amend the State plan of operation or conflict with the rights and levels of benefits to which a household is entitled. In the case of all or part of an Indian reservation, the State agency as defined in section 3(n)(1) of this Act shall be responsible for conducting such program on such reservation unless the Secretary determines that the State agency (as defined in section 3(n)(1) of this Act) is failing, subsequent to the enactment of this Act, properly to administer such program on such reservation in accordance with the purposes of this Act and further determines that the State agency as defined in section 3(n)(2) of this Act is capable of effectively and efficiently conducting such program, in light of the distance of the reservation from State agency-operated certification and issuance centers, the previous experience of such tribal organization in the operation of programs authorized under the Indian Self-Determination Act (25 U.S.C. 450) and similar Acts of Congress, the tribal organization's management and fiscal capabilities, and the adequacy of measures taken by the tribal organization to ensure that there shall be no discrimination in the operation of the program on the basis of race, color, sex, or national origin, in which event such State agency shall be responsible for conducting such program and submitting for approval a plan of operation specifying the manner in which such program will be conducted. The Secretary, upon the request of a tribal organization, shall provide the designees of such organization with appropriate training and technical assistance to enable them to qualify as expeditiously as possible as a State agency pursuant to section 3(n)(2) of this Act. A State agency, as defined in section 3(n)(1) of this Act, before it submits its plan of operation to the Secretary for the administration of the food stamp program on all or part of an Indian reservation, shall consult in good faith with the tribal organization about that portion of the State's plan of operation pertaining to the implementation of the program for members of the tribe, and shall implement the program in a manner that is responsive to the needs of the Indians on the reservation as determined by ongoing consultation with the tribal organization.

(e) The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

(1) that the State agency shall (A) at the option of the State agency, inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the food stamp program; and[83] (B) use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English;

(2) that each household which contacts a food stamp office in person during office hours to make what may reasonably be interpreted as an oral or written request for food stamp assistance shall receive and shall be permitted to file, on the same day that such contact is first made, a simplified, uniform national application form for participation in the food stamp program designed by the Secretary, unless the Secretary approves a deviation from that form by a particular State agency because of the use by that agency of a dual public assistance food stamp application form pursuant to subsection (i) of this section, the requirements of an agency's computer system, or other exigencies as determined by the Secretary, and in approving such deviation, the Secretary takes into account whether such State forms are easy to use, brief and readable. In

[82] P.L. 97-98, §1316, 95 Stat. 1286.
[83] P.L. 100-435, §204(a), amended subparagraph (A) in its entirety.

consultation with the Secretary of Health and Human Services, the Secretary shall develop a program to provide assistance to States that request assistance in the development of brief, simply-written and readable application forms including application forms that cover the food stamp program, the aid to families with dependent children program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and medical assistance programs administered by the Secretary of Health and Human Services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Each food stamp application form shall contain, in plain and prominent language on its front cover, a place where applicants can write their names, addresses, and signatures, and instructions in understandable terms informing households of their right to file the application without immediately completing additional sections, describing the expedited processing requirements of section 11(e)(9) and informing households that benefits are provided only from the date of application[84]. Each application form shall contain a description in understandable terms in prominent and boldface lettering of the appropriate civil and criminal provisions dealing with violations of this Act, including the penalties therefor, by members of an eligible household. Each application shall also contain in understandable terms and in prominent and boldface lettering a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subjected to criminal prosecution for knowingly providing incorrect information. The State agency shall waive in-office interviews, on a household's request, if a household is unable to appoint an authorized representative pursuant to paragraph (7) and has no adult household members able to come to the appropriate State agency office because such members are elderly, are mentally or physically handicapped, live in a location not served by a certification office, or have transportation difficulties or similar hardships as determined by the State agency (including hardships due to residing in a rural area, illness, care of a household member, prolonged severe weather, or work or training hours).[85] If an in-office interview is waived, the State agency may conduct a telephone interview or a home visit.[86] The State agency shall provide for telephone contact by, mail delivery of forms to, and mail return of forms by, households that have transportation difficulties or similar hardships.[87] One adult member of a household that is applying for a coupon allotment shall be required to certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment. The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses. In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification of income other than that determined to be excluded by section 5(d) of this Act (in part through the use of the information, if any, obtained under section 16(e) of this Act), household size (in any case such size is questionable), and such other eligibility factors as the Secretary determines to be necessary to implement sections 5 and 6 of this Act, although the State agency may verify prior to certification, whether questionable or not, the size of any applicant household and such other eligibility factors as the State agency determines are necessary, so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application, and that the State agency shall—

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[84]P.L. 100-435, §310, inserted ", and in approving such deviation, the Secretary takes into account whether such State forms are easy to use, brief and readable. In consultation with the Secretary of Health and Human Services, the Secretary shall develop a program to provide assistance to States that request assistance in the development of brief, simply-written and readable application forms including application forms that cover the food stamp program, the aid to families with dependent children program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and medical assistance programs administered by the Secretary of Health and Human Services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Each food stamp application form shall contain, in plain and prominent language on its front cover, a place where applicants can write their names, addresses, and signatures, and instructions in understandable terms informing households of their right to file the application without immediately completing additional sections, describing the expedited processing requirements of section 11(e)(9) and informing households that benefits are provided only from the date of application".

[85]P.L. 100-435, §330, amended this sentence in its entirety.

[86]P.L. 100-435, §330, added this sentence.

[87]P.L. 100-435, §330, added this sentence.

(A) provide each applicant household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise completing the application process;

(B) assist each applicant household in obtaining appropriate verification and completing the application process;

(C) not require any household to submit additional proof of a matter on which the State agency already has current verification as determined under regulations issued by the Secretary, unless the State agency has reason to believe that the information possessed by the agency is inaccurate, incomplete, or inconsistent;

(D) subject to subparagraph (E), not deny any application for participation under this program solely because of the failure of a person outside the household to cooperate (other than an individual failing to cooperate who would otherwise be a household member but for the operation of any of the individual disqualification provisions of subsections (b), (d), (e), (f), and (g) of section 6; and

(E) process applications if a household complies with the requirements of the first sentence of section 6(c), by taking appropriate steps to verify information otherwise required to be verified under this Act[88], and that the State agency shall provide the household, at the time of each certification and recertification, with a statement describing the reporting responsibilities of the household under this Act, and provide a toll-free or local telephone number, or a telephone number at which collect calls will be accepted by the State agency, at which the household may reach an appropriate representative of the State agency[89];

(4) that the State agency shall insure that each participating household receive a notice of expiration of its certification prior to the start of the last month of its certification period advising the household that it must submit a new application in order to renew its eligibility for a new certification period and, further, that each such household which seeks to be certified another time or more times thereafter by filing an application for such recertification no later than fifteen days prior to the day upon which its existing certification period expires shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment issued to it pursuant to its prior certification, but if such household is found to be ineligible or to be eligible for a smaller allotment during the new certification period it shall not continue to participate and receive benefits on the basis authorized for the preceding certification period even if it makes a timely request for a fair hearing pursuant to paragraph (10) of this subsection: *Provided*, That the timeliness standards for submitting the notice of expiration and filing an application for recertification may be modified by the Secretary in light of sections 5(f)(2) and 6(c) of this Act if administratively necessary;

(5) the specific standards to be used in determining the eligibility of applicant households which shall be in accordance with sections 5 and 6 of this Act and shall include no additional requirements imposed by the State agency;

(6) that (A) the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this Act; (B) the State agency personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the United States Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis;[90] (C) the State agency shall[91] provide a continuing, comprehensive program of training for all personnel undertaking such certification so that eligible households are promptly and accurately certified to receive the allotments for which they are eligible under this Act[92]; (D) the State

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[88]P.L. 100-435, §311, inserted ", and that the State agency shall—" and subparagraphs (A), (B), (C), (D), and (E). Alignment as in original.

[89]P.L. 100-435, §323, inserted ", and that the State agency shall provide the household, at the time of each certification and recertification, with a statement describing the reporting responsibilities of the household under this Act, and provide a toll-free or local telephone number, or a telephone number at which collect calls will be accepted by the State agency, at which the household may reach an appropriate representative of the State agency".

[90]P.L. 100-435, §321(a)(1), struck out "and".

[91]P.L. 100-435, §322(a)(1), struck out "undertake to".

[92]P.L. 100-435, §322(a)(2), inserted "so that eligible households are promptly and accurately certified to receive the allotments for which they are eligible under this Act".

agency, at its option, may undertake intensive training to ensure that State agency personnel who undertake the certification of households that include a member who engages in farming are qualified to perform such certification;[93] and (E) at its option, the State agency may provide, or contract for the provision of, training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps;[94]

(7) that an applicant household may be represented in the certification process and that an eligible household may be represented in coupon issuance or food purchase by a person other than a member of the household so long as that person has been clearly designated as the representative of that household for that purpose by the head of the household or the spouse of the head, and, where the certification process is concerned, the representative is an adult who is sufficiently aware of relevant household circumstances, except that the Secretary may restrict the number of households which may be represented by an individual and otherwise establish criteria and verification standards for representation under this paragraph;

(8) safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this Act, regulations issued pursuant to this Act, Federal assistance programs, or federally assisted State programs, except that (A) such safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law, and (B) notwithstanding any other provision of law, all information obtained under this Act from an applicant household shall be made available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act or any regulation issued under this Act;

(9) that the State agency shall—

(A) provide coupons no later than five days after the date of application to any household which—

(i)(I) has gross income that is less than $150 per month; or

(II) is a destitute migrant or a seasonal farmworker household in accordance with the regulations governing such households in effect July 1, 1982; and

(ii) has liquid resources that do not exceed $100;[95]

(B) provide coupons no later than five days after the date of application to any household in which all members are homeless individuals and that meets the income and resource criteria for coupons under this Act;[96]

(C) provide coupons no later than five days after the date of application to any household that has a combined gross income and liquid resources that is less than the monthly rent, or mortgage, and utilities of the household; and[97]

(D)[98] to the extent practicable, verify the income and liquid resources of a household referred to in subparagraph (A), (B), or (C)[99] prior to issuance of coupons to the household;

(10) for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under any provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance: *Provided*, That any household which timely requests such a fair hearing after receiving individual notice of agency action reducing or terminating its benefis within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier, except that in any case in which the State agency receives from the household a written statement containing information that clearly requires a reduction or termination of the household's benefits, the State agency may act immediately to reduce or terminate the household's benefits and may provide notice of its action to the household as late as the date on which the action becomes effective;

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[93] P.L. 100-435, §321(a)(2), added subparagraph (D).
[94] P.L. 100-435, §322(b), inserted "and" and added subparagraph (E).
[95] P.L. 100-77, §809(a)(1), struck out "and".
[96] P.L. 100-77, §809(a)(3), added this subparagraph (B).
[97] P.L. 100-77, §809(a)(3), added subparagraph (C).
[98] P.L. 100-77, §809(a)(2), redesignated the former subparagraph (B) as subparagraph (D).
[99] P.L. 100-77, §809(a)(4), struck out "the household" and substituted "a household referred to in subparagraph (A), (B), or (C)".

(11) upon receipt of a request from a household, for the prompt restoration in the form of coupons to a household of any allotment or portion thereof which has been wrongfully denied or terminated, except that allotments shall not be restored for any period of time more than one year prior to the date the State agency receives a request for such restoration from a household or the State agency is notified or otherwise discovers that a loss to a household has occurred;

(12) for the submission of such reports and other information as from time to time may be required by the Secretary;

(13) for indicators of expected performance in the administration of the program;

(14) that the State agency shall prominently display in all food stamp and public assistance offices posters prepared or obtained by the Secretary describing the information contained in subparagraphs (A) through (D) of this paragraph and shall make available in such offices for home use pamphlets prepared or obtained by the Secretary listing (A) foods that contain substantial amounts of recommended daily allowances of vitamins, minerals, and protein for children and adults; (B) menus that combine such foods into meals; (C) details on eligibility for other programs administered by the Secretary that provide nutrition benefits; and (D) general information on the relationship between health and diet;

(15) that the State agency shall specify a plan of operation for providing food stamps for households that are victims of a disaster; that such plan shall include, but not be limited to, procedures for informing the public about the disaster program and how to apply for its benefits, coordination with Federal and private disaster relief agencies and local government officials, application procedures to reduce hardship and inconvenience and deter fraud, and instruction of caseworkers in procedures for implementing and operating the disaster program.[100]

(16) that the State agency shall require each household certified as eligible to participate by methods other than the out-of-office methods specified in the fourth sentence of paragraph (2) of this subsection in those project areas or parts of project areas in which the Secretary, in consultation with the Department's Inspector General, finds that it would be useful to protect the program's integrity and would be cost effective, to present a photographic identification card when using its authorization card in order to receive its coupons. The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;

(17) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act;

(18) at the option of the State agency, for the establishment and operation of an automatic data processing and information retrieval system that meets such conditions as the Secretary may prescribe and that is designed to provide efficient and effective administration of the food stamp program;

(19) that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act shall be requested and utilized by the State agency (described in section 3(n)(1) of this Act) to the extent permitted under the provisions of section 303(d) of the Social Security Act;

(20) that, in project areas or parts thereof where authorization cards are used, and eligible households are required to present photographic identification cards in order to receive their coupons, the State agency shall include, in any agreement or contract with a coupon issuer, a provision that (A) the issuer shall (i) require the presenter to furnish a photographic identification card at the time the authorization card is presented, and (ii) record on the authorization card the identification number shown on the photographic identification card; and (B) if the State agency determines that the authorization card has been stolen or otherwise was not received by a household certified as eligible, the issuer shall be liable to the State agency for the face value of any coupons issued in the transaction in which such card is used and the issuer fails to comply with the requirements of clause (A) of this paragraph;

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[100] As in original. Period should possibly be a semicolon.

(21) that the State agency shall establish a system and take action on a periodic basis to verify and otherwise assure that an individual does not receive coupons in more than one jurisdiction within the State; and[101]

(22) the plans of the State agency for carrying out employment and training programs under section 6(d)(4), including the nature and extent of such programs, the geographic areas and households to be covered under such program, and the basis, including any cost information, for exemptions of categories and individuals and for the choice of employment and training program components reflected in the plans.[102]

(23) in a project area in which 5,000 or more households participate in the food stamp program, for the establishment and operation of a unit for the detection of fraud in the food stamp program, including the investigation, and assistance in the prosecution, of such fraud; and

(24) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 13(c).

(f) To encourage the purchase of nutritious foods, the Secretary is authorized to extend food and nutrition education to reach food stamp program participants, using the methods and techniques developed in the expanded food and nutrition education and other programs. State agencies shall encourage food stamp program participatants to participate in the expanded food and nutrition education program conducted under section 3(d) of the Act of May 8, 1914 (7 U.S.C. 343(d)), commonly known as the Smith-Lever Act and any program established under sections 1584 through 1588 of the Food Security Act of 1985. At the request of personnel of such education program, State agencies, wherever practicable, shall allow personnel and information materials of such education program to be placed in food stamp offices.

(g) If the Secretary determines, upon information received by the Secretary, investigation initiated by the Secretary, or investigation that the Secretary shall initiate upon receiving sufficient information evidencing a pattern of lack of compliance by a State agency of a type specified in this subsection, that in the administration of the food stamp program there is a failure by a State agency without good cause to comply with any of the provisions of this Act, the regulations issued pursuant to this Act, the State plan of operation submitted pursuant to subsection (d) of this section, the State plan for automated data processing submitted pursuant to subsection (o)(2) of this section, or the Secretary's standards for the efficient and effective administration of the program established under section 16(b)(1) of this Act the Secretary shall immediately inform such State agency of such failure and shall allow the State agency a specified period of time for the correction of such failure. If the State agency does not correct such failure within that specified period, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance forthwith by the State agency and, upon suit by the Attorney General in an appropriate district court of the United States having jurisdiction of the geographic area in which the State agency is located and a showing that noncompliance has occurred, appropriate injunctive relief shall issue, and, whether or not the Secretary refers such matter to the Attorney General, the Secretary shall proceed to withhold from the State such funds authorized under sections 16(a), 16(c), and 16(g) of this Act as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14 of this Act.

(h) If the Secretary determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State shall, upon request of the Secretary, deposit into the Treasury of the United States, a sum equal to the face value of any coupon or coupons issued as a result of such negligence or fraud.

(i) Notwithstanding any other provision of law, the Secretary and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program under part A of title IV of the Social Security Act; (2) households in which all members are applicants for or recipients of supplemental security income shall be informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program at the social security office and be certified for eligibility utilizing information contained in files of the Social Security Administration; (3) households in which all members are included in a federally aided public assistance or State or local general assistance grant shall have their application for participation in the food stamp program contained in the public assistance or general assistance application

[101] As in original. Possibly should strike "and".
[102] As in original. Possibly should be a semicolon.

form; and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance or general assistance, shall be certified for participation in the food stamp program based on information in the public assistance or general assistance case file to the extent that reasonably verified information is available in such case file. In addition to implementing paragraphs (1) through (4), the State agency shall inform applicants for benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that such applicants may file, along with their application for such benefits, an application for benefits under this Act, and that if such applicants file, they shall have a single interview for food stamps and for benefits under part A of title IV of the Social Security Act.[108] No household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 5(a) and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.

(j)(1) Any individual who is an applicant for or recipient of social security benefits (under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services) shall be informed of the availability of benefits under the food stamp program and informed of the availability of a simple application to participate in such program at the social security office.

(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on the date of enactment of the Food Security Act of 1985, regarding services to be provided in social security offices under this subsection and subsection (i), in a manner to ensure that—

(A) applicants for and recipients of social security benefits are adequately notified in social security offices that assistance may be available to them under this Act;

(B) applications for assistance under this Act from households in which all members are applicants for or recipients of supplemental security income will be forwarded immediately to the State agency in an efficient and timely manner; and

(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to provide such services.

(k) Subject to the approval of the President, post offices in all or part of the State may issue, upon request by the State agency, food stamps to eligible households.

(l) Whenever the ratio of a State's average food stamp participation in any quarter of a fiscal year to the State's total population in that quarter (estimated on the basis of the latest available population estimates as provided by the Department of Commerce, Bureau of the Census, Series P-25, Current Population Reports (or its successor series)) exceeds 60 per centum, the Office of the Inspector General of the Department of Agriculture shall immediately schedule a financial audit review of a sample of project areas within that State, and shall, upon completion of the audit, provide a report to Congress of its findings and recommendations within one hundred and eighty days. Any financial audit review subsequent to the first such review, required under the preceding sentence, shall be conducted at the option of the Office of the Inspector General.

(m) The Secretary shall provide for the use of fee agents in rural Alaska. As used in this subsection "fee agent" means a paid agent who, although not a State employee, is authorized by the State to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(n) The Secretary shall require State agencies to conduct verification and implement other measures where necessary, but no less often than annually, to assure that an individual does not receive both coupons and benefits or payments referred to in section 6(g) or both coupons and assistance provided in lieu of coupons under section 17(b)(1).

(o)(1) The Secretary shall develop, after consultation with, and with the assistance of, an advisory group of State agencies appointed by the Secretary without regard to the provisions of the Federal Advisory Committee Act, a model plan for the comprehensive automation of data processing and computerization of information systems under the food stamp program. The plan shall be developed and made available for public comment through publication of the proposed plan in the Federal Register not later than October 1, 1986. The Secretary shall complete the plan, taking into consideration public comments received, not later than February 1, 1987. The elements of the plan

[108] P.L. 100-435, §352, amended this sentence in its entirety.

may include intake procedures, eligibility determinations and calculation of benefits, verification procedures, coordination with related Federal and State programs, the issuance of benefits, reconciliation procedures, the generation of notices, and program reporting. In developing the plan, the Secretary shall take into account automated data processing and information systems already in existence in States and shall provide for consistency with such systems.

(2) Not later than October 1, 1987, each State agency shall develop and submit to the Secretary for approval a plan for the use of an automated data processing and information retrieval system to administer the food stamp program in such State. The State plan shall take into consideration the model plan developed by the Secretary under paragraph (1) and shall provide time frames for completion of various phases of the State plan. If a State agency already has a sufficient automated data processing and information retrieval system, the State plan may, subject to the Secretary's approval, reflect the existing State system.

(3) Not later than April 1, 1988, the Secretary shall prepare and submit to Congress an evaluation of the degree and sufficiency of each State's automated data processing and computerized information systems for the administration of the food stamp program, including State plans submitted under paragraph (2). Such report shall include an analysis of additional steps needed for States to achieve effective and cost-efficient data processing and information systems. The Secretary, thereafter, shall periodically update such report.

(4) Based on the Secretary's findings in such report submitted under paragraph (3), the Secretary may require a State agency, as necessary to rectify identified shortcomings in the administration of the food stamp program in the State, except where such direction would displace State initiatives already under way, to take specified steps to automate data processing systems or computerize information systems for the administration of the food stamp program in the State if the Secretary finds that, in the absence of such systems, there will be program accountability or integrity problems that will substantially affect the administration of the food stamp program in the State.

(5)(A) Subject to subparagraph (B), in the case of a plan for an automated data processing and information retrieval system submitted by a State agency to the Secretary under paragraph (2), such State agency shall—

(i) commence implementation of its plan not later than October 1, 1988; and

(ii) meet the time frames set forth in the plan.

(B) The Secretary shall extend a deadline imposed under subparagraph (A) to the extent the Secretary deems appropriate based on the Secretary's finding of a good faith effort of a State agency to implement its plan in accordance with subparagraph (A).

(p) When a State agency learns, through its own reviews under section 16 or other reviews, or through other sources, that it has improperly denied, terminated, or underissued benefits to an eligible household, the State agency shall promptly restore any improperly denied benefits to the extent required by sections 11(e)(11) and 14(b), and shall take other steps to prevent a recurrence of such errors where such error was caused by the application of State agency practices, rules or procedures inconsistent with the requirements of this Act or with regulations or policies of the Secretary issued under the authority of this Act.[104]

CIVIL MONEY PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 12. [7 U.S.C. 2021] (a) Any approved retail food store or wholesale food concern may be disqualified for a specified period of time from further participation in the food stamp program, or subjected to a civil money penalty of up to $10,000 for each violation if the Secretary determines that its disqualification would cause hardship to food stamp households, on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this Act or the regulations issued pursuant to this Act.

(b) Disqualification under subsection (a) shall be—

(1) for a reasonable period of time, of no less than six months nor more than five years, upon the first occasion of disqualification;

(2) for a reasonable period of time, of no less than twelve months nor more than ten years, upon the second occasion of disqualification; and

(3) permanent upon—

(A) the third occasion of disqualification; or

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[104] P.L. 100-435, §320, added subsection (p).

(B) the first occasion of any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern, except that the Secretary shall have the discretion to impose a civil money penalty of up to $20,000 in lieu of disqualification under this subparagraph, for such purchase of coupons or trafficking in coupons or cards that constitutes a violation of the provisions of this Act or the regulations issued pursuant to this Act, if the Secretary determines that there is substantial evidence that such store or food concern had an effective policy and program in effect to prevent violations of the Act and the regulations.[105]

(c) The action of disqualification or the imposition of a civil money penalty shall be subject to review as provided in section 14 of this Act.

(d) As a condition of authorization to accept and redeem coupons, the Secretary may require a retail food store or wholesale food concern which has been disqualified or subjected to a civil penalty pursuant to subsection (a) to furnish a bond to cover the value of coupons which such store or concern may in the future accept and redeem in violation of this Act. The Secretary shall, by regulation, prescribe the amount, terms, and conditions of such bond. If the Secretary finds that such store or concern has accepted and redeemed coupons in violation of this Act after furnishing such bond, such store or concern shall forfeit to the Secretary an amount of such bond which is equal to the value of coupons accepted and redeemed by such store or concern in violation of this Act. Such store or concern may obtain a hearing on such forfeiture pursuant to section 14.

(e)(1) In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil money penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil money penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this subsection.

(2) At any time after a civil money penalty imposed under paragraph (1) has become final under the provisions of section 14(a), the Secretary may request the Attorney General to institute a civil action against the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business to collect the penalty and such court shall have jurisdiction to hear and decide such action. In such action, the validity and amount of such penalty shall not be subject to review.

COLLECTION AND DISPOSITION OF CLAIMS

SEC. 13. [7 U.S.C. 2022] (a)(1) The Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under the provisions of this Act or the regulations issued pursuant to this Act, including, but not limited to, claims arising from fraudulent and nonfraudulent overissuances to recipients, including the power to waive claims if the Secretary determines that to do so would serve the purposes of this Act. Such powers with respect to claims against recipients may be delegated by the Secretary to State agencies. The Secretary shall have the power to reduce amounts otherwise due to a State agency under section 16 of this Act to collect unpaid claims assessed against the State agency if the State agency has declined or exhausted its appeal rights under section 14 of this Act. In determining whether to settle, adjust, compromise, or waive a claim arising against a State agency pursuant to section 16(c), the Secretary shall review a State agency's plans for new dollar investment in activities to improve program administration in order to reduce payment error, and shall take the State agency's plans for new dollar investment in such activities into consideration as the Secretary considers appropriate.[106] To the extent that a State agency does not pay a claim established under section 16(c)(1)(C), including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding, within 30 days from the date on which the bill for collection

[105] P.L. 100-435, §344, amended paragraph (3) in its entirety.
[106] P.L. 100-435, §601, added this sentence.

(after a determination on any request for a waiver for good cause related to the claim has been made by the Secretary) is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency, unless the State agency appeals the claim under section 16(c)(7).[107] If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is 2 years after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.[108] If the State agency pays such claim (in whole or in part, including an agreement to have all or part of the claim paid through a reduction in Federal administrative funding) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency shall be promptly returned with interest, accruing from the date the payment is received until the date the payment is returned.[109] Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues.[110]

(2) Each adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.

(b)(1)(A) In the case of any ineligibility determination under section 6(b) of this Act, the household of which such ineligible individual is a member is required to agree to a reduction in the allotment of the household of which such individual is a member, or payment in cash, in accordance with a schedule determined by the Secretary, that will be sufficient to reimburse the Federal Government for the value of any overissuance of coupons resulting from the activity that was the basis of the ineligibility determination. If a household refuses to make an election within thirty days of a demand for an election, or elects to make a payment in cash under the provisions of the preceding sentence and fails to do so, the household shall be subject to an allotment reduction.

(B) State agencies shall collect any claim against a household arising from the overissuance of coupons based on an ineligibility determination under section 6(b), other than claims collected pursuant to subparagraph (A), by using other means of collection, unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective.

(2)(A) State agencies shall collect any claim against a household arising from the overissuance of coupons, other than claims the collection of which is provided for in paragraph (1) of this subsection and claims arising from an error of the State agency, by reducing the monthly allotments of the household. These collections shall be limited to 10 per centum of the monthly allotment (or $10 per month, whenever that would result in a faster collection rate).

(B) State agencies may collect any claim against a household arising from the overissuance of coupons, other than claims collected pursuant to paragraph (1) or subparagraph (A), by using other means of collection.

(c)(1) As used in this subsection, the term "uncollected overissuance" means the amount of an overissuance of coupons, as determined under subsection (b)(1), that has not been recovered pursuant to subsection (b)(1).

(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)), whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

(3) A State agency may recover an uncollected overissuance—

(A) by—

(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.

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[107] P.L. 100-435, §602, added this sentence.
[108] See footnote 107.
[109] See footnote 107.
[110] See footnote 107.

ADMINISTRATIVE AND JUDICIAL REVIEW

SEC. 14. [7 U.S.C. 2023] (a) Whenever an application of a retail food store or wholesale food concern to participate in the food stamp program is denied pursuant to section 9 of this Act, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 12 of this Act, or a retail food store or wholesale food concern forfeits a bond under section 12(d) of this Act, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 13 of this Act, or a claim against a State agency is stated pursuant to the provisions of section 13 of this Act, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved. Such notice shall be delivered by certified mail or personal service. If such store, concern, or State agency is aggrieved by such action, it may, in accordance with regulations promulgated under this Act, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final. If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Secretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination. If the store, concern, or State agency feels aggrieved by such final determination, it may obtain judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination. Determinations regarding claims made pursuant to section 16(c) shall be made on the record after opportunity for an agency hearing in accordance with section 556 and 557 of title 5, United States Code, in which one or more administrative law judges appointed pursuant to section 3105 of such title shall preside over the taking of evidence.[111] Such judges shall have authority to issue and enforce subpoenas in the manner prescribed in sections 13(c) and (d) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499m(c) and (d)) and to appoint expert witnesses under the provisions of Rule 706 of the Federal Rules of Evidence.[112] The Secretary may not limit the authority of such judges presiding over determinations regarding claims made pursuant to section 16(c).[113] The Secretary shall provide a summary procedure for determinations regarding claims made pursuant to section 16(c) in amounts less than $50,000.[114] Such summary procedure need not include an oral hearing.[115] On a petition by the State agency or sua sponte, the Secretary may permit the full administrative review procedure to be used in lieu of such summary review procedure for a claim of less than $50,000.[116] Subject to the right of judicial review hereinafter provided, a determination made by an administrative law judge regarding a claim made pursuant to section 16(c) shall be final and shall take effect thirty days after the date of the delivery or service of final notice of such determination.[117] The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process. The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence, except that judicial review of determinations regarding claims made pursuant to section 16(c) shall be a review on the administrative record[118]. During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and remain in full force and effect, unless on application to the court on not less than ten days' notice, and after hearing thereon and a consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury, the court temporarily stays such administrative action pending disposition of

[111] P.L. 100-435, §603(1), added this sentence.
[112] See footnote 111.
[113] See footnote 111.
[114] See footnote 111.
[115] See footnote 111.
[116] See footnote 111.
[117] See footnote 111.
[118] P.L. 100-435, §603(2), inserted ", except that judicial review of determinations regarding claims made pursuant to section 16(c) shall be a review on the administrative record".

such trial or appeal. Notwithstanding the administrative or judicial review procedures set forth in this subsection, determinations by the Secretary concerning whether a State agency had good cause for its failure to meet error rate tolerance levels established under section 16(c) are final.[119]

(b) In any judicial action arising under this Act, any food stamp allotments found to have been wrongfully withheld shall be restored only for periods of not more than one year prior to the date of the commencement of such action, or in the case of an action seeking review of a final State agency determination, not more than one year prior to the date of the filing of a request with the State for the restoration of such allotments or, in either case, not more than one year prior to the date the State agency is notified or otherwise discovers the possible loss to a household.

VIOLATIONS AND ENFORCEMENT

SEC. 15. [7 U.S.C. 2024] (a) Notwithstanding any other provision of this Act, the Secretary may provide for the issuance or presentment for redemption of coupons to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States or to ensure enforcement of the provisions of this Act or the regulations issued pursuant to this Act.

(b)(1) Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of a value of $100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) In the case of any individual convicted of an offense under paragraph (1) of this subsection, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $10,000, or, if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(d) Coupons issued pursuant to this Act shall be deemed to be obligations of the United States within the meaning of section 8 of title 18, United States Code.

(e) Any coupon issuer or any officer, employee, or agent thereof convicted of failing to provide the report required under section 7(d) of this Act or of violating the regulations issued under section 7(d) and (e) of this Act shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

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[119] P.L. 100-435, §603(3), added this sentence.

(f) Any coupon issuer or any officer, employee, or agent thereof convicted of knowingly providing false information in the report required under section 7(d) of this Act shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(g) The Secretary may subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for coupons or authorization cards in any manner not authorized by this Act or the regulations issued under this Act. Any forfeiture and disposal of property forfeited under this subsection shall be conducted in accordance with procedures contained in regulations issued by the Secretary.

ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. [7 U.S.C. 2025] (a) The Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency's operation of the food stamp program, which costs shall include, but not be limited to, the cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of coupons after their delivery to receiving points within the State, (3) the issuance of coupons to all eligible households, (4) food stamp informational activities, including those undertaken[120] under section 11(e)(1)(A), and (5)[121] fair hearings: *Provided*, That the Secretary is authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further authorized at the Secretary's discretion to pay any State agency administering the food stamp program on all or part of an Indian reservation under section 11(d) of this Act such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the food stamp program, as well as to permit each State to retain 50 per centum of the value of all funds or allotments recovered or collected pursuant to subsections (b)(1) and (c) of section 13 and 25 per centum of the value of all funds or allotments recovered or collected pursuant to section 13(b)(2) of this Act, except the value of funds or allotments recovered or collected pursuant to section 13(b)(2) which arise from an error of a State agency. The officials responsible for making determinations of ineligibility under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) The Secretary shall (1) establish standards for the efficient and effective administration of the food stamp program by the States, including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program, and (2) instruct each State to submit, at regular intervals, reports which shall specify the specific administrative actions proposed to be taken and implemented in order to meet the efficiency and effectiveness standards established pursuant to clause (1) of this subsection.

(c)(1) The program authorized under this Act shall include a system that enhances payment accuracy by establishing fiscal incentives that require State agencies with high error rates to share in the cost of payment error and provide enhanced administrative funding to States with the lowest error rates. Under such system—

(A) the Secretary shall adjust a State agency's federally funded share of administrative costs pursuant to subsection (a), other than the costs already shared in excess of 50 percent under the proviso in the first sentence of subsection (a) or under subsection (g), by increasing such share of all such administrative costs by one percentage point to a maximum of 60 percent of all such administrative costs for each full one-tenth of a percentage point by which the payment error rate is less than 6 percent, except that only States whose rate of invalid decisions in denying eligibility is less than a nationwide percentage that the Secretary determines to be reasonable shall be entitled to the adjustment prescribed in this subsection;

(B) the Secretary shall foster management improvements by the States pursuant to subsection (b) by requiring State agencies other than those receiving adjustments under subparagraph (A) to develop and implement corrective action plans to reduce payment errors; and

(C) for any fiscal year in which a State agency's payment error rate exceeds the payment error tolerance level for payment error rates announced under paragraph (6), other than for good cause shown, the State agency shall pay to the Secretary an amount equal to its payment error rate less such tolerance level

[120] P.L. 100-435, §204(b), struck out "permitted" and substituted ", including those undertaken".
[121] P.L. 100-77, §808(b), redesignated the former paragraph (4) as (5) and added this paragraph (4).

times the total value of allotments issued in such a fiscal year by such State agency. The amount of liability shall not be affected by corrective action under subparagraph (B).

(2) As used in this section—

(A) the term "payment error rate" means the sum of the point estimates of an overpayment error rate and an underpayment error rate determined by the Secretary from data collected in a probability sample of participating households;

(B) the term "overpayment error rate" means the percentage of the value of all allotments issued in a fiscal year by a State agency that are either—

(i) issued to households that fail to meet basic program eligibility requirements; or

(ii) overissued to eligible households; and

(C) the term "underpayment error rate" means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

(3) The following errors may be measured for management purposes but shall not be included in the payment error rate:

(A) Any errors resulting in the application of new regulations promulgated under this Act during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date for such regulations.

(B) Errors resulting from the use by a State agency of correctly processed information concerning households or individuals received from Federal agencies or from actions based on policy information approved or disseminated, in writing, by the Secretary or the Secretary's designee.

(4) The Secretary may require a State agency to report any factors that the Secretary considers necessary to determine a State agency's payment error rate, enhanced administrative funding, or claim for payment error, under this subsection. If a State agency fails to meet the reporting requirements established by the Secretary, the Secretary shall base the determination on all pertinent information available to the Secretary.

(5) To facilitate the implementation of this subsection each State agency shall submit to the Secretary expeditiously data regarding its operations in each fiscal year sufficient for the Secretary to establish the payment error rate for the State agency for such fiscal year and determine the amount of either incentive payments under paragraph (1)(A) or claims under paragraph (1)(C). The Secretary shall make a determination for a fiscal year, and notify the State agency of such determination, within nine months following the end of each fiscal year. The Secretary shall initiate efforts to collect the amount owed by the State agency as a claim established under paragraph (1)(C) for a fiscal year, subject to the conclusion of any formal or informal appeal procedure and administrative or judicial review under section 14 (as provided for in paragraph (7)), before the end of the fiscal year following such fiscal year.

(6) At the time the Secretary makes the notification to State agencies of their error rates and incentive payments or claims pursuant to paragraphs (1)(A) and (1)(C), the Secretary shall also announce a national performance measure that shall be the sum of the products of each State agency's error rate as developed for the notifications under paragraph (5) times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time of the notifications issued pursuant to paragraph (5). Where a State fails to meet reporting requirements pursuant to paragraph (4), the Secretary may use another measure of a State's error developed pursuant to paragraph (5), to develop the national performance measure. The announced national performance measure shall be used to establish a payment-error tolerance level. Such tolerance level for any fiscal year will be one percentage point added to the lowest national performance measure ever announced up to and including such fiscal year under this section. The payment-error tolerance level shall be used in determining the State share of the cost of payment error under paragraph (1)(C) for the fiscal year whose error rates are being announced under paragraph (5).

(7) If the Secretary asserts a financial claim against a State agency under paragraph (1)(C), the State may seek administrative and judical review of the action pursuant to section 14.[122]

(d) The Secretary shall undertake the following studies of the payment error improvement system established under subsection (c):

(1) An assessment of the feasibility of measuring payment errors due to improper denials and terminations of benefits or otherwise developing performance standards with financial consequences for improper denials and terminations, including incorporation in subsection (c). The Secretary shall report the

[122] P.L. 100-435, §604(1), amended subsection (c) in its entirety.

results of such study and the recommendations of the Secretary to the Congress by July 1, 1990.

(2) An evaluation of the effectiveness of the system of program improvement initiated under this section that shall be reported to the Congress along with the Secretary's recommendations no later than 3 years from the date of enactment of this section.[123]

(e) The Secretary and State agencies shall (1) require, as a condition of eligibility for participation in the food stamp program, that each household member furnish to the State agency their social security account number (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program. The Secretary and State agencies shall have access to the information regarding individual food stamp program applicants and participants who receive benefits under title XVI of the Social Security Act that has been provided to the Secretary of Health and Human Services, but only to the extent that the Secretary and the Secretary of Health and Human Services determine necessary for purposes of determining or auditing a household's eligibility to receive assistance or the amount thereof under the food stamp program, or verifying information related thereto.

(f) Notwithstanding any other provision of law, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of officers and employees of the Department of Agriculture may be paid in judicial or administrative proceedings to which such officers and employees have been made parties and that arise directly out of their performance of duties under this Act.

(g) Effective October 1, 1980, the Secretary is authorized to pay to each State agency an amount equal to—

75 per centum of the costs incurred by the State agency in the planning, design, development, or installation of automatic data processing and information retrieval systems that the Secretary determines (1) will assist in meeting the requirements of this Act, (2) meet such conditions as the Secretary prescribes, (3) are likely to provide more efficient and effective administration of the food stamp program, and (4) will be compatible with other such systems used in the administration of State plans under the Aid to Families with Dependent Children Program under title IV of the Social Security Act: *Provided*, That there shall be no such payments to the extent that a State agency is reimbursed for such costs under any other Federal program or uses such systems for purposes not connected with the food stamp program: *Provided further*, That any costs matched under this subsection shall be excluded in determining the State agency's administrative costs under any other subsection of this section.

(h)(1) The Secretary shall allocate among the State agencies in each fiscal year, from funds appropriated for such fiscal year under section 18(a)(1), the amount of $40,000,000 for the fiscal year ending September 30, 1986, $50,000,000 for the fiscal year ending September 30, 1987, $60,000,000 for the fiscal year ending September 30, 1988, and $75,000,000 for each of the fiscal years ending September 30, 1989 and September 30, 1990, to carry out the employment and training program under section 6(d)(4), except as provided in paragraph (3), during such fiscal year.

(2) If, in carrying out such program during such fiscal year, a State agency incurs costs that exceed the amount allocated to the State agency under paragraph (1), the Secretary shall pay such State agency an amount equal to 50 per centum of such additional costs, subject to the first limitation in paragraph (3).

(3) The Secretary shall also reimburse each State agency in an amount equal to 50 per centum of the total amount of payments made or costs incurred by the State agency in connection with transportation costs and other expenses reasonably necessary and directly related to participation in an employment and training program under section 6(d)(4), except that such total amount shall not exceed an amount representing $25 per participant per month for costs of transportation and other actual costs (other than dependent care costs) and an amount representing $160 per month per dependent[124] and such reimbursement shall not be made out of funds allocated under paragraph (1).

(4) Funds provided to a State agency under this subsection may be used only for operating an employment and training program under section 6(d)(4), and may not be used for carrying out other provisions of the Act.

(5)(A) The Secretary shall monitor the employment and training programs carried out by State agencies under section 6(d)(4) to measure their effectiveness in terms of the increase in the numbers of household members who obtain employment and the numbers of such members who retain such employment as a result of their participation in such employment and training programs.

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[123] P.L. 100-435, §604(2), amended subsection (d) in its entirety.

[124] P.L. 100-435, §404(g), inserted "for costs of transportation and other actual costs (other than dependent care costs) and an amount representing $160 per month per dependent".

(B) The Secretary shall, not later than January 1, 1989, report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of such employment and training programs.

(6) The Secretary shall develop, and transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a proposal for modifying the rate of Federal payments under this subsection so as to reflect the relative effectiveness of the various States in carrying out employment and training programs under section 6(d)(4).[125]

(i)(1) The Department of Agriculture may use quality control information made available under this section to determine which project areas have payment error rates (as defined in subsection (d)(1)) that impair the integrity of the food stamp program.

(2) The Secretary may require a State agency to carry out new or modified procedures for the certification of households in areas identified under paragraph (1) if the Secretary determines such procedures would improve the integrity of the food stamp program and be cost effective.

(3) Not later than 12 months after the date of enactment of the Food Security Act of 1985, and each 12 months thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that lists project areas identified under paragraph (1) and describes any procedures required to be carried out under paragraph (2).

(j)[126] The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.

(k) Not later than 180 days after the date of the enactment of the Hunger Prevention Act of 1988, and annually thereafter, the Secretary shall publish instructional materials specifically designed to be used by the State agency to provide intensive training to State agency personnel who undertake the certification of households that include a member who engages in farming.[127]

RESEARCH, DEMONSTRATION, AND EVALUATIONS

SEC. 17. [7 U.S.C. 2026] (a) The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition-related benefits.

(b)(1) The Secretary may conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households, including projects involving the payment of the value of allotments or the average value of allotments by household size in the form of cash to eligible households all of whose members are age sixty-five or over or any of whose members are entitled to supplemental security income benefits under title XVI of the Social Security Act or to aid to families with dependent children under part A of title IV of the Social Security Act, the use of countersigned food coupons or similar identification mechanisms that do not invade a household's privacy, and the use of food checks or other voucher-type forms in place of food coupons. The Secretary may waive the requirements of this Act to the degree necessary for such projects to be conducted, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households, shall be implemented which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act. Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act shall be continued through October 1, 1990, if the State so requests.

(2) The Secretary shall, jointly with the Secretary of Labor, implement two pilot projects involving the performance of work in return for food stamp benefits in each of the seven administrative regions of the Food and Nutrition Service of the Department of Agriculture, such projects to be (A) appropriately divided in each region between locations that are urban and rural in characteristics and among location selected to

[125] P.L. 100-435, §404(e), added paragraph (6).
[126] P.L. 100-435, §321(c) redesignated this subsection as subsection (j).
[127] P.L. 100-435, §321(b), added subsection (k).

provide a representative cross-section of political subdivisions in the States and (B) submitted for approval prior to project implementation, together with the names of the agencies or organizations that will be engaged in such projects, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. Under such pilot projects, any person who is subject to the work registration requirements pursuant to section 6(d) of this Act, and is a member of a household that does not have earned income equal to or exceeding the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, shall be ineligible to participate in the food stamp program as a member of any household during any month in which such person refuses, after not being offered employment in the private sector of the economy for more than thirty days (ten days in at least one pilot project area designated by the Secretary) after the initial registration for employment referred to in section 6(d)(1)(i) of this Act, to accept an offer of employment from a political subdivision or a prime sponsor pursuant to the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812), for which employment compensation shall be paid in the form of the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, with each hour of employment entitling the household to a portion of the allotment equal in value to 100 per centum of the Federal minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)); which employment shall not, together with any other hours worked in any other capacity by such person exceed forty hours a week; and which employment shall not be used by the employer to fill a job opening created by the action of such employer in laying off or terminating the employment of any regular employee not supported under this paragraph in anticipation of filling the vacancy so created by hiring an employee or employees to be supported under this paragraph: *Provided,* That all of the political subdivision's or prime sponsor's public service jobs supported under the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812), are filled before such subdivision or sponsor can extend a job offer pursuant to this paragraph: *Provided further,* That the sponsor of each such project shall provide the assurances required of prime sponsors under section 205(c)(7), (8), (15), (19), and (24) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 845(c)), and the Secretary shall require such sponsors to comply with the conditions contained in sections 208(a)(1), (4), and (5) and (c) and 703(4) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 848(a) and (c) and 983). The Secretary and the Secretary of Labor shall jointly issue reports to the appropriate committees of Congress on the progress of such pilot projects no later than six and twelve months following enactment of this Act, shall issue interim reports no later than October 1, 1979, October 1, 1980, and March 30, 1981, shall issue a final report describing the results of such pilot projects based upon their operation from their commencement through the fiscal year ending September 30, 1981, and shall pay to the agencies or organizations operating such pilot projects 50 per centum of all administrative costs involved in such operation.

(c) The Secretary shall develop and implement measures for evaluating, on an annual or more frequent basis, the effectiveness of the food stamp program in achieving its stated objectives, including, but not limited to, the program's impact upon the nutritional and economic status of participating households, the program's impact upon all sectors of the agricultural economy, including farmers and ranchers, as well as retail food stores, and the program's relative fairness to households of different income levels, different age composition, different size, and different regions of residence. Further, the Secretary shall, by way of making contracts with or grants to public or private organizations or agencies, implement pilot programs to test various means of measuring on a continuing basis the nutritional status of low income people, with special emphasis on people who are eligible for food stamps, in order to develop minimum common criteria and methods for systematic nutrition monitoring that could be applied on a nationwide basis. The locations of the pilot programs shall be selected to provide a representative geographic and demographic cross-section of political subdivisions that reflect natural usage patterns of health and nutritional services and that contain high proportions of low income people. The Secretary shall report on the progress of these pilot programs on an annual basis commencing on July 1, 1982, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, together with such recommendations as the Secretary deems appropriate.

(d)(1) As used in this subsection, the term "qualification period" means a period of time immediately preceding—

(A) in the case of a new applicant for benefits under this Act, the date on which application for such benefits is made by the individual; or

(B) in the case of an otherwise continuing recipient of coupons under this Act, the date on which such coupons would otherwise be issued to the individual.

(2) Upon application of a State or political subdivision thereof, the Secretary may conduct one pilot project involving the employment requirements described in this subsection in each of four project areas selected by the Secretary.

(3) Under the pilot projects conducted pursuant to this subsection, except as provided in paragraphs (4), (5), and (6), an individual who resides in a project area shall not be eligible for assistance under this Act if the individual was not employed a minimum of twenty hours per week, or did not participate in a workfare program established under section 20, during a qualification period of—

(A) thirty or more consecutive days, in the case of an individual whose benefits under a State or Federal unemployment compensation law were terminated immediately before such qualification period began; or

(B) sixty or more consecutive days, in the case of an individual not described in clause (A).

(4) The provisions of paragraph (3) shall not apply in the case of an individual who—

(A) is under eighteen or over fifty-nine years of age;

(B) is certified by a physician as physically or mentally unfit for employment;

(C) is a parent or other member of a household with responsibility for the care of a dependent child under six years of age or of an incapacitated person;

(D) is a parent or other caretaker of a child under six years of age in a household in which there is another parent who, unless covered by clause (A) or (B), or both such clauses, is employed a minimum of twenty hours per week or participating in a workfare program established under section 20;

(E) is in compliance with section 6(d) and demonstrates, in a manner prescribed by the Secretary, that the individual is able and willing to accept employment but is unable to obtain such employment; or

(F) is a member of any other group described by the Secretary.

(5) The Secretary may waive the requirements of paragraph (3) in the case of all individuals within all or part of a project area if the Secretary finds that such area—

(A) has an unemployment rate of over 10 per centum; or

(B) does not have a sufficient number of jobs to provide employment for individuals subject to this subsection.

(6) An individual who has become ineligible for assistance under this Act by reason of paragraph (3) may reestablish eligibility for assistance after a period of ineligibility by—

(1) becoming employed for a minimum of twenty hours per week during any consecutive thirty-day period; or

(2) participating in a workfare program established under section 20 during any consecutive thirty-day period.

(e) The Secretary shall conduct a study of the effects of reductions made in benefits provided under this Act pursuant to part 1 of subtitle A of title I of the Omnibus Budget Reconciliation Act of 1981, the Food Stamp and Commodity Distribution Amendments of 1981, the Food Stamp Act Amendments of 1982, and any other laws enacted by the Ninety-seventh Congress which affect the food stamp program. The study shall include a study of the effect of retrospective accounting and periodic reporting procedures established under such Acts, including the impact on benefit and administrative costs and on error rates and the degree to which eligible households are denied food stamp benefits for failure to file complete periodic reports. The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report on the results of such study no later than February 1, 1984, and a final report on the results of such study no later than March 1, 1985.

(f)(1) [128] In order to encourage States to plan, design, develop, and implement a system for making food stamp benefits available through the use of intelligent benefit cards or other automated or electronic benefit delivery systems, the Secretary may conduct one or more pilot or experimental projects, subject to the restrictions imposed by subsection (b)(1) and section 7(g)(2), designed to test whether the use of such cards or systems can enhance the efficiency and effectiveness of program operations while ensuring that individuals receive correct benefit amounts on a timely basis. Intelligent benefit cards developed under such a demonstration project shall contain information, encoded on a computer chip embedded in a credit card medium, including the eligibility of the individual and the amount of benefits to which such individual is entitled. Any other automated or electronic benefit delivery system developed under such a demonstration project shall be able to use a plastic card to access such information from a data file.[129]

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[128] As in original. No paragraph (2) enacted.
[129] P.L. 100-435, §504, added subsection (f).

(g) In order to assess the effectiveness of the employment and training programs established under section 6(d) in placing individuals into the work force and withdrawing such individuals from the food stamp program, the Secretary is authorized to carry out studies comparing the pre- and post-program labor force participation, wage rates, family income, level of receipt of food stamp and other transfer payments, and other relevant information, for samples of participants in such employment and training programs as compared to the appropriate control or comparison groups that did not participate in such programs. Such studies shall, to the maximum extent possible—

(1) collect such data for up to 3 years after the individual has completed the employment and training program; and

(2) yield results that can be generalized to the national program as a whole.

The results of such studies and reports shall be considered in developing or updating the performance standards required under section 6.[139]

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. [7 U.S.C. 2027] (a)(1) To carry out the provisions of this Act, there are hereby authorized to be appropriated not in excess of $5,847,600,000 for the fiscal year ending September 30, 1978; not in excess of $6,778,900,000 for the fiscal year ending September 30, 1979; not in excess of $9,491,000,000 for the fiscal year ending September 30, 1980; not in excess of $11,480,000,000 for the fiscal year ending September 30, 1981; not in excess of $11,300,000,000 for the fiscal year ending September 30, 1982; not in excess of $12,874,000,000 for the fiscal year ending September 30, 1983; not in excess of $13,145,000,000 for the fiscal year ending September 30, 1984; and not in excess of $13,933,000,000 for the fiscal year ending September 30, 1985. To carry out the provisions of this Act, there are hereby authorized to be appropriated not in excess of $13,037,000,000 for the fiscal year ending September 30, 1986; not in excess of $13,936,000,000 for the fiscal year ending September 30, 1987; not in excess of $14,741,000,000 for the fiscal year ending September 30, 1988; not in excess of $15,435,000,000 for the fiscal year ending September 30, 1989; and not in excess of $15,970,000,000 for the fiscal year ending September 30, 1990. Not to exceed one-fourth of 1 per centum of the previous year's appropriation is authorized in each such fiscal year to carry out the provisions of section 17 of this Act. The Secretary shall, by the fifteenth day of each month, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the Secretary's best estimate of the second preceding month's expenditure, including administrative costs, as well as the cumulative totals for the fiscal year. In each monthly report, the Secretary shall also state whether there is reason to believe that reductions in the value of allotments issued to households certified to participate in the food stamp program will be necessary under subsection (b) of this section.

(2) No funds authorized to be appropriated under this Act or any other Act of Congress shall be used by any person, firm, corporation, group, or organization at any time, directly or indirectly, to interfere with or impede the implementation of any provision of this Act or any rule, regulation, or project thereunder, except that this limitation shall not apply to the provision of legal and related assistance in connection with any proceeding or action before any State or Federal agency or court. The President shall ensure that this paragraph is complied with by such order or other means as the President deems appropriate.

(b) In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year. Notwithstanding any other provision of this Act, if in any fiscal year the Secretary finds that the requirements of participating States will exceed the appropriation amount authorized in subsection (a)(1), the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection.

(c) In prescribing the manner in which allotments will be reduced under subsection (b) of this section, the Secretary shall ensure that such reductions reflect, to the maximum extent practicable, the ratio of household income, determined under sections 5(d) and 5(e) of this Act, to the income standards of eligibility, for households of equal size, determined under section 5(c) of this Act. The Secretary may, in prescribing the manner in which allotments will be reduced, establish (1) special provisions applicable to persons sixty years of age or over and persons who are physically or mentally handicapped or otherwise disabled, and (2) minimum allotments after any reductions are otherwise determined under this section.

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[139] P.L. 100-435, §505, added subsection (g).

(d) Not later than sixty days after the issuance of a report under subsection (a) of this section in which the Secretary expresses the belief that reductions in the value of allotments to be issued to households certified to participate in the food stamp program will be necessary, the Secretary shall take the requisite action to reduce allotments in accordance with the requirements of this section. Not later than seven days after the Secretary takes any action to reduce allotments under this section, the Secretary shall furnish the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a statement setting forth (1) the basis of the Secretary's determination, (2) the manner in which the allotments will be reduced, and (3) the action that has been taken by the Secretary to reduce the allotments.

(e) Funds collected from claims against households or State agencies, including claims collected pursuant to sections 7(f), 11(g) and (h), subsections (b) and (c) of section 13, claims resulting from resolution of audit findings, and claims collected from households receiving overissuances, shall be credited to the food stamp program appropriation account for the fiscal year in which the collection occurs. Funds provided to State agencies under section 16(c) of this Act shall be paid from the appropriation account for the fiscal year in which the funds are provided.

(f) No funds appropriated to carry out this Act may be transferred to the Office of the Inspector General, or the Office of the General Counsel, of the Department of Agriculture.

BLOCK GRANT

SEC. 19. [7 U.S.C. 2028] (a)(1)(A) From the sums appropriated under this Act the Secretary shall, subject to the provisions of this subsection and subsection (b), pay to the Commonwealth of Puerto Rico not to exceed $825,000,000 for the fiscal year ending September 30, 1986, $852,750,000 for the fiscal year ending September 30, 1987, $879,750,000 for the fiscal year ending September 30, 1988, $908,250,000 for the fiscal year ending September 30, 1989, and $936,750,000 for the fiscal year ending September 30, 1990, to finance 100 per centum of the expenditures for food assistance provided to needy persons, and 50 per centum of the administrative expenses related to the provision of such assistance.

(B) The payments to the Commonwealth for any fiscal year shall not exceed the expenditures by that jurisdiction during that year for the provision of the assistance the provision of which is included in the plan of the Commonwealth approved under subsection (b) and 50 per centum of the related administrative expenses.

(2) The Secretary shall, subject to the provisions of subsection (b), pay to the Commonwealth for the applicable fiscal year, at such times and in such manner as the Secretary may determine, the amount estimated by the Commonwealth pursuant to subsection (b)(1)(A)(iv), reduced or increased to the extent of any prior overpayment or current underpayment which the Secretary determines has been made under this section and with respect to which adjustment has not already been made under this subsection.

(b)(1)(A) In order to receive payments under this Act for any fiscal year, the Commonwealth shall have a plan for that fiscal year approved by the Secretary under this section. By July 1 of each year, if the Commonwealth wishes to receive payments, it shall submit a plan for the provision of the assistance described in subsection (a)(1)(A) for the following fiscal year which—

(i) designates the agency or agencies directly.[131] responsible for the administration, or supervision of the administration, of the program for the provision of such assistance;

(ii) assesses the food and nutrition needs of needy persons residing in the Commonwealth;

(iii) describes the program for the provision of such assistance, including the assistance to be provided and the persons to whom such assistance will be provided, and any agencies designated to provide such assistance, which program must meet such requirements as the Secretary may by regulation prescribe for the purpose of assuring that assistance is provided to the most needy persons in the jurisdiction;

(iv) estimates the amount of expenditures necessary for the provision of the assistance described in the program and related administrative expenses, up to the amount provided for payment by subsection (a)(1)(A); and

(v) includes such other information as the Secretary may require.

(B)(i) The Secretary shall approve or disapprove any plan submitted pursuant to subparagraph (A) no later than August 1 of the year in which it is submitted. The

[131] As in original. Period should be stricken.

Secretary shall approve any plan which complies with the requirements of subparagraph (A). If a plan is disapproved because it does not comply with any of the requirements of that paragraph the Secretary shall, except as provided in subparagraph (B)(ii), notify the appropriate agency in the Commonwealth that payments will not be made to it under subsection (a) for the fiscal year to which the plan applies until the Secretary is satisfied that there is no longer any such failure to comply, and until the Secretary is so satisfied, the Secretary will make no payments.

(ii) The Secretary may suspend the denial of payments under subparagraph (B)(i) for such period as the Secretary determines appropriate and instead withhold payments provided for under subsection (a), in whole or in part, for the fiscal year to which the plan applies, until the Secretary is satisfied that there is no longer any failure to comply with the requirements of subparagraph (A), at which time such withheld payments shall be paid.

(2)(A) The Commonwealth shall provide for a biennial audit of expenditures under its program for the provision of the assistance described in subsection (a)(1)(A), and within 120 days of the end of each fiscal year in which the audit is made, shall report to the Secretary the findings of such audit.

(B) Within 120 days of the end of the fiscal year, the Commonwealth shall provide the Secretary with a statement as to whether the payments received under subsection (a) for that fiscal year exceeded the expenditures by it during that year for which payment is authorized under this section, and if so, by how much, and such other information as the Secretary may require.

(C)(i) If the Secretary finds that there is a substantial failure by the Commonwealth to comply with any of the requirements of subparagraphs (A) and (B), or to comply with the requirements of subsection (b)(1)(A) in the administration of a plan approved under subsection (b)(1)(B), the Secretary shall, except as provided in subparagraph (C)(ii), notify the appropriate agency in the Commonwealth that further payments will not be made to it under subsection (a) until the Secretary is satisfied that there will no longer be any such failure to comply, and until the Secretary is so satisfied, the Secretary shall make no further payments.

(ii) The Secretary may suspend the termination of payments under subparagraph (C)(i) for such period as the Secretary determines appropriate, and instead withhold payments provided for under subsection (a), in whole or in part, until the Secretary is satisfied that there will no longer be any failure to comply with the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), at which time such withheld payments shall be paid.

(iii) Upon a finding under subparagraph (C)(i) of a substantial failure to comply with any of the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), the Secretary may, in addition to or in lieu of any action taken under subparagraphs (C)(i) and (C)(ii), refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the Commonwealth of Puerto Rico, and upon suit by the Attorney General in an appropriate district court of the United States and a showing that noncompliance has occurred, appropriate injunctive relief shall issue.

(c)(1) The Secretary shall provide for the review of the programs for the provision of the assistance described in subsection (a)(1)(A) for which payments are made under this Act.

(2) The Secretary is authorized as the Secretary deems practicable to provide technical assistance with respect to the programs for the provision of the assistance described in subsection (a)(1)(A).

(d) Whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property provided or financed under this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both, but if the value of the funds, assets or property involved is not over $200, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both.

WORKFARE

SEC. 20. [7 U.S.C. 2029] (a)(1) The Secretary shall permit any political subdivision, in any State, that applies and submits a plan to the Secretary in compliance with guidelines promulgated by the Secretary to operate a workfare program pursuant to which every member of a household participating in the food stamp program who is not exempt by virtue of the provisions of subsection (b) of this section shall accept an offer from such subdivision to perform work on its behalf, or may seek an offer to perform work, in return for compensation consisting of the allotment to which the household is entitled under section 8(a) of this Act, with each hour of such work entitling that household to a portion of its allotment equal in value to 100 per centum of the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938.

(2)(A) The Secretary shall promulgate guidelines pursuant to paragraph (1) which, to the maximum extent practicable, enable a political subdivision to design and operate a workfare program under this section which is compatible and consistent with similar workfare programs operated by the subdivision.

(B) A political subdivision may comply with the requirements of this section by operating—

(i) a workfare program pursuant to title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) any other workfare program which the Secretary determines meets the provisions and protections provided under this section.

(b)(1) A household member shall be exempt from workfare requirements imposed under this section if such member is—

(A) exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2);

(B) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program required under title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(C) mentally or physically unfit;

(D) under sixteen years of age;

(E) sixty years of age or older; or

(F) a parent or other caretaker of a child in a household in which another member is subject to the requirements of this section or is employed fulltime.

(2)(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the maximum number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month; by

(ii) the higher of the Federal or State minimum wage in effect for such month.

(B) In no event may any such member be required to participate in such program more than 120 hours per month.

(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.

(c) No operating agency shall require any participating member to work in any workfare position to the extent that such work exceeds in value the allotment to which the household is otherwise entitled or that such work, when added to any other hours worked during such week by such member for compensation (in cash or in kind) in any other capacity, exceeds thirty hours a week.

(d) The operating agency shall—

(1) not provide any work that has the effect of replacing or preventing the employment of an individual not participating in the workfare program;

(2) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours; and

(3) reimburse participants for actual costs of transportation and other actual costs all of which are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month.

(e) The operating agency may allow a job search period, prior to making workfare assignments, of up to thirty days following a determination of eligibility.

(f) In the event that any person fails to comply with the requirements of this section, neither that person nor the household to which that person belongs shall be eligible to participate in the food stamp program for two months, unless that person or another person in the household satisfies all outstanding workfare obligations prior to the end of the two-month disqualification period.

(g)(1) The Secretary shall pay to each operating agency 50 per centum of all administrative expenses incurred by such agency in operating a workfare program, including reimbursements to participants for work-related expenses as described in subsection (d)(3) of this section.

(2)(A) From 50 per centum of the funds saved from employment related to a workfare program operated under this section, the Secretary shall pay to each operating agency an amount not to exceed the administrative expenses described in paragraph (1) for which no reimbursement is provided under such paragraph.

(B) For purposes of subparagraph (A), the term "funds saved from employment related to a workfare program operated under this section" means an amount equal to

three times the dollar value of the decrease in allotments issued to households, to the extent that such decrease results from wages received by members of such households for the first month of employment beginning after the date such members commence such employment if such employment commences—

(i) while such members are participating for the first time in a workfare program operated under this section; or

(ii) in the thirty-day period beginning on the date such first participation is terminated.

(3) The Secretary may suspend or cancel some or all of these payments, or may withdraw approval from a political subdivision to operate a workfare program, upon a finding that the subdivision has failed to comply with the workfare requirements.

SEC. 21. [7 U.S.C. 2030] DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.[132]

(a) IN GENERAL.—Upon written application of the State of Washington (in this section referred to as the "State") and after the approval of such application by the Secretary, the State may conduct a Family Independence Demonstration Project (in this section referred to as the "Project") in all or in part of the State in accordance with this section to determine whether the Project, as an alternative to providing benefits under the food stamp program, would more effectively break the cycle of poverty and would provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—In an application submitted under subsection (a), the State shall provide the following:

(1) Except as provided in this section, the provisions of chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall apply to the operation of the Project.

(2) All of the following terms and conditions shall be in effect under the Project:

(A)(i) Except as provided in clause (ii), individuals with respect to whom benefits may be paid under part A of title IV of the Social Security Act, and such other individuals as are included in the Project pursuant to chapter 434 of the 1987 Washington Laws, as enacted in May 1987, shall be eligible to participate in the Project in lieu of receiving benefits under the food stamp program and cash assistance under any other Federal program covered by the Project.

(ii) Individuals who receive only child care or medical benefits under the Project shall not be eligible to receive food assistance under the Project. Such individuals may receive coupons under the food stamp program if eligible.

(B) Individuals who participate in the Project shall receive for each month an amount of cash assistance that is not less than the total value of the assistance such individuals would otherwise receive, in the aggregate, under the food stamp program and any cash-assistance Federal program covered by the Project for such month, including income and resource exclusions and deductions, and benefit levels.

(C)(i) The State may provide a standard benefit for food assistance under the Project, except that individuals who participate in the Project shall receive as food assistance for a month an amount of cash that is not less than the value of the assistance such individuals would otherwise receive under the food stamp program.

(ii) The State may provide a cash benefit for food assistance equal to the value of the thrifty food plan.

(D) Each month participants in the Project shall be notified by the State of the amount of Project assistance that is provided as food assistance for such month.

(E) The State shall have a program to require participants to engage in employment and training activities carried out under chapter 434 of the 1987 Washington Laws, as enacted in May 1987.

(F) Food assistance shall be provided under this Project—

(i) to any individual who is accepted for participation in the Project, not later than 30 days after such individual applies to participate in the Project;

(ii) to any participant for the period that begins on the date such participant applies to participate in the Project, except that the amount of such assistance shall be reduced to reflect the pro rata value of any coupons received under the food stamp program for such period for the benefit of such participant; and

(iii) until—

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[132] P.L. 100-203, §1509, added §21.

(I) the participant's cash assistance under the Project is terminated;

(II) such participant is informed of such termination and is advised of the eligibility requirements for participation in the food stamp program;

(III) the State determines whether such participant will be eligible to receive coupons as a member of a household under the food stamp program; and

(IV) coupons under the food stamp program are received by such participant if such participant will be eligible to receive coupons as a member of a household under the food stamp program.

(G)(i) Paragraphs (1)(B), (8), (10), and (19) of section 11(e) shall apply with respect to the participants in the Project in the same manner as such paragraphs apply with respect to participants in the food stamp program.

(ii) Each individual who contacts the State in person during office hours to make what may reasonably be interpreted as an oral or written request to participate in the Project shall receive and shall be permitted to file on the same day that such contact is first made, an application form to participate in the Project.

(iii) The Project shall provide for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly persons, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person.

(iv) An individual who applies to participate in the Project may be represented by another person in the review process if the other person has been clearly designated as the representative of such individual for that purpose, by such individual or the spouse of such individual, and, in the case of the review process, the representative is an adult who is sufficiently aware of relevant circumstances, except that the State may—

(I) restrict the number of individuals who may be represented by such person; and

(II) otherwise establish criteria and verification standards for representation under this clause.

(v) The State shall provide a method for reviewing applications to participate in the Project submitted by, and distributing food assistance under the Project to, individuals who do not reside in permanent dwellings or who have no fixed mailing address. In carrying out the preceding sentence, the State shall take such steps as are necessary to ensure that participation in the Project is limited to eligible individuals.

(3) An assurance that the State will allow any individual to apply to participate in the food stamp program without applying to participate in the Project.

(4) An assurance that the cost of food assistance provided under the Project will not be such that the aggregate amount of payments made under this section by the Secretary to the State over the period of the Project will exceed the sum of—

(A) the anticipated aggregate value of the coupons that would have been distributed under the food stamp program if the individuals who participate in the Project had participated instead in the food stamp program; and

(B) the portion of the administrative costs for which the State would have received reimbursement under—

(i) subsections (a) and (g) of section 16 (without regard to the first proviso to such subsection (g)) if the individuals who participated in the Project had participated instead in the food stamp program; and

(ii) section 16(h) if the individuals who participated in the Project had participated in an employment and training program under section 6(d)(4);

except that this paragraph shall not be construed to prevent the State from claiming payments for additional households that would qualify for benefits under the food stamp program in the absence of a cash out of such benefits as a result of changes in economic, demographic, and other conditions in the State or a subsequent change in the benefit levels approved by the State legislature.

(5) An assurance that the State will continue to carry out the food stamp program while the State carries out the Project.

(6) If there is a change in existing State law that would eliminate guaranteed benefits or reduce the rights of applicants or participants under this section during, or as a result of participation in, the Project, the Project shall be terminated.

(7) An assurance that the Project shall include procedures and due process guarantees no less beneficial than those which are available under Federal law and under State law to participants in the food stamp program.

(8)(A) An assurance that, except as provided in subparagraph (B), the State will carry out the Project during a 5-year period beginning on the date the first individual is approved for participation in the Project.

(B) The Project may be terminated 180 days after—

(i) the State gives notice to the Secretary that it intends to terminate the Project; or

(ii) the Secretary, after notice and an opportunity for a hearing, determines that the State materially failed to comply with this section.

(c) FUNDING.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b), then the Secretary shall—

(1) approve such application; and

(2) from funds appropriated under this Act, pay the State for—

(A) the actual cost of the food assistance provided under the Project; and

(B) the percentage of the administrative costs incurred by the State to provide food assistance under the Project that is equal to the percentage of the State's aggregate administrative costs incurred in operating the food stamp program in the most recent fiscal year for which data are available, that was paid under subsections (a), (g), and (h) of section 16 of this Act.

(d)(1) PROJECT APPLICATION.—Unless and until an application to participate in the Project is approved, and food assistance under the Project is made available to the applicant—

(A) such application shall also be treated as an application to participate in the food stamp program; and

(B) section 11(e)(9) shall apply with respect to such application.

(2) Coupons provided under the food stamp program with respect to an individual who—

(A) is participating in such program; and

(B) applies to participate in the Project;

may not be reduced or terminated because such individual applies to participate in the Project.

(3) For households eligible to participate in the food stamp program that contain some members who participate in the Project and other members who do not participate in the Project, those members who do not participate in the Project shall receive a separate benefit in food coupons under the food stamp program that is not less than the amount of food stamp benefits that such members would have received were the Project not implemented.[133]

(e) WAIVER.—The Secretary shall (with respect to the Project) waive compliance with any requirement contained in this Act (other than this section) that (if applied) would prevent the State from carrying out the Project or effectively achieving its purpose.

(f) CONSTRUCTION.—For purposes of any other Federal, State or local law—

(1) cash assistance provided under the Project that represents food assistance shall be treated in the same manner as coupons provided under the food stamp program are treated; and

(2) participants in the program who receive food assistance under the Project shall be treated in the same manner as recipients of coupons under the food stamp program are treated.

(g) PROJECT AUDITS.—The Comptroller General of the United States shall—

(1) conduct periodic audits of the operation of the Project to verify the amounts payable to the State from time to time under subsection (b)(4); and

(2) submit to the Secretary of Agriculture, the Secretary of Health and Human Services, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of each such audit.

(h) EVALUATION.—With funds appropriated under section 18(a)(1), the Secretary shall conduct, in consultation with the Secretary of Health and Human Services, an evaluation of the Project.

[*Internal References.*—Social Security Act §§303(d), 402(a), 410(a) and (c), and 1137(b) and P.L. 95-348, §3(c) (Vol. II, p. 968) cite the Food Stamp Act of 1977; P.L. 92-203, §29(b) (Vol. II, p. 602) cites the Food Stamp Act of 1964 (78 Stat. 703), as amended, and P.L. 93-288, §412(a) and (c) (Vol. II, p. 648) cite the Food Stamp Act of 1964. Social Security Act §§2(a), 202(e), 205(c), 303(d), 402(a), 1002(a), 1402(a), 1602(a)(State), and the catchlines to §§202(f), (g), (h), 232, title IV, Part A (at §401), 410, 1106, title XVI (SSI), 1612(b), 1613(a), and 1631(e) have footnotes referring to P.L. 88-525.]

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[133] P.L. 100-481, §1, amended paragraph (3) in its entirety.

P.L. 88-643, Approved October 13, 1964 (78 Stat. 1043)
Central Intelligence Agency Retirement Act of 1964 for Certain Employees

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SEC. 111. [50 U.S.C. 403 note] When used in this Act, the term—

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(2) "Director" means the Director of Central Intelligence;

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TRANSITION PROVISIONS

SEC. 307. [50 U.S.C. 403 note] (a) The Director shall issue regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.[1]

(b) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

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[*Internal Reference.*—Social Security Act §210(a) cites the Central Intelligence Agency Retirement Act of 1964.]

P.L. 89-73, Approved July 14, 1965 (79 Stat. 218)
Older Americans Act of 1965

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FEDERAL AGENCY CONSULTATION

SEC. 203. [42 U.S.C. 3013] (a) The Commissioner[1], in carrying out the purposes and provisions of this Act, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this Act, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this Act shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purposes of this Act, particularly administering any program set forth in subsection (b), shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.

(b) For the purposes of subsection (a), programs related to the purposes of this Act shall include—

(1) the Job Training Partnership Act,
(2) title II of the Domestic Volunteer Service Act of 1973,
(3) titles XVI, XVIII, XIX, and XX of the Social Security Act,
(4) sections 231 and 232 of the National Housing Act,
(5) the United States Housing Act of 1937,
(6) section 202 of the Housing Act of 1959,
(7) title I of the Housing and Community Development Act of 1974,
(8) title I of Higher Education Act of 1965 and the Adult Education Act,
(9) sections 3, 9, and 16 of the Urban Mass Transportation Act of 1964,
(10) the Public Health Service Act, including block grants under title XIX of such Act[2],
(11) the Low-Income Home Energy Assistance Act of 1981,
(12) part A of the Energy Conservation in Existing Buildings Act of 1976, relating to weatherization assistance for low income persons,

[1]See P.L. 99-335 (Vol. II, p. 807).
[1]Commissioner on Aging, Department of Health and Human Services.
[2]P.L. 100-175, §105(b), inserted ", including block grants under title XIX of such Act".

(13) the Community Services Block Grant Act,[3]
(14) demographic statistics and analysis programs conducted by the Bureau of the Census under title 13, United States Code,[4]
(15) parts II and III of title 38, United States Code,[5]
(16) the Rehabilitation Act of 1973, and[6]
(17) the Developmental Disabilities and Bill of Rights Act.[7]

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SEC. 210. [42 U.S.C. 3020a]

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(b) No part of the costs of any project under any title of this Act may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

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SURPLUS PROPERTY ELIGIBILITY

SEC. 213. [42 U.S.C. 3020d] Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this Act, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act, shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

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SEC. 306. [42 U.S.C. 3026]

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(c)(1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

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STATE PLANS

SEC. 307. [42 U.S.C. 3027] (a) Except as provided in section 309(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Commissioner a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall comply with all of the following requirements:[8]

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(12) The plan shall provide the following assurances, with respect to a long-term care ombudsman program:

(A) The State agency will establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate

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[3] P.L. 100-175, §104(a)(1), struck out "and".
[4] P.L. 100-175, §104(a)(2), struck out the period and substituted ", and".
P.L. 100-175, §106(b)(1), struck out "and".
[5] P.L. 100-175, §104(a)(3), added paragraph (15).
P.L. 100-175, §106(b)(2), struck out the period and substituted a comma.
[6] P.L. 100-175, §106(b)(3), added paragraph (16).
[7] P.L. 100-175, §106(b)(3), added paragraph (17).
[8] P.L. 100-175, §182(k)(1), struck out a dash and substituted "comply with all of the following requirements:".

private nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), an Office of the State Long-Term Care Ombudsman (in this paragraph referred to as the "Office") and shall carry out through the Office a long-term care ombudsman program which provides an individual who will, on a full-time basis—

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents;

(ii) provide for training staff and volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(iii) carry out such other activities as the Commissioner deems appropriate.

(B) The State agency will establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or upon court order.

(C) The State agency will establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis.

(D) The State agency will establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or the individual's legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order.

(E) In planning and operating the ombudsman program, the State agency will consider the views of area agencies on aging, older individuals, and provider agencies.

(F) The State agency will—

(i) ensure that no individual involved in the designation of the long-term care ombudsman (whether by appointment or otherwise) or the designation of the head of any subdivision of the Office is subject to a conflict of interest;

(ii) ensure that no officer, employee, or other representative of the Office is subject to a conflict of interest; and

(iii) ensure that mechanisms are in place to identify and remedy any such or other similar conflicts.

(G) The State agency will—

(i) ensure that adequate legal counsel is available to the Office for advice and consultation and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

(ii) ensure that the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities.

(H) The State agency will require the Office to—

(i) prepare an annual report containing data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and to provide policy, regulatory, and legislative recommendations to solve such problems, resolve such complaints, and improve the quality of care and life in long-term care facilities;

(ii) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to

long-term care facilities and services in that State, and recommend any changes in such laws, regulations, and policies deemed by the Office to be appropriate;

(iii) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

(iv) provide for the training of the Office staff, including volunteers and other representatives of the Office, in—

(I) Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State;

(II) investigative techniques; and

(III) such other matters as the State deems appropriate;

(v) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.) and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319); and

(vi) include any area or local ombudsman entity designated by the State Long-Term Care Ombudsman as a subdivision of the Office. Any representative of an entity designated in accordance with the preceding sentence (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this paragraph.

(I) The State will ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(J) The State will—

(i) ensure that willful interference with representatives of the Office in the performance of their official duties (as defined by the Commissioner) shall be unlawful;

(ii) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident or employee for having filed a complaint with, or providing information to, the Office;

(iii) provide for appropriate sanctions with respect to such interference, retaliation, and reprisals; and

(iv) ensure that representatives of the Office shall have—

(I) access to long-term care facilities and their residents; and

(II) with the permission of a resident or resident's legal guardian, have access to review the resident's medical and social records or, if a resident is unable to consent to such review and has no legal guardian, appropriate access to the resident's medical and social records.

(K) The State agency will prohibit any officer, employee, or other representative of the Office to investigate any complaint filed with the Office unless the individual has received such training as may be required under subparagraph (G)(iv) and has been approved by the long-term care ombudsman as qualified to investigate such complaints.[9]

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PROGRAM AUTHORIZED

SEC. 321. [42 U.S.C. 3030d] (a) The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for any of the following supportive services:

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(4) services designed (A) to assist older individuals to obtain adequate housing, including residential repair and renovation projects designed to enable older individuals to maintain their homes in conformity with minimum housing standards; (B) to adapt homes to meet the needs of older individuals (who have[10] physical disabilities; or (C) to prevent unlawful entry into residences of elderly individuals, through the installation of security devices and through structural modifications or alterations of such residences;

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[9]P.L. 100-175, §129(d), amended paragraph (12) in its entirety.
[10]P.L. 100-175, §136(d)(2), struck out "suffering from" and subetituted "who have".

if such services meet standards prescribed by the Commissioner and are necessary for the general welfare of older individuals. For purposes of paragraph (5), the term "client assessment through case management" includes providing information relating to assistive technology.[11]

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PART C—NUTRITION SERVICES

SUBPART 1—CONGREGATE NUTRITION SERVICES

PROGRAM AUTHORIZED

SEC. 331. [42 U.S.C 3030e] The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects—

(1) which, 5 or more days a week, provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council;

(2) which shall be provided in congregate settings; and

(3) which may include nutrition education services and other appropriate nutrition services for older individuals.

SUBPART 2—HOME DELIVERED NUTRITION SERVICES

PROGRAM AUTHORIZED

SEC. 336. [42 U.S.C. 3030f] The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects for older individuals which, 5 or more days a week, provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage life) meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

CRITERIA

SEC. 337. [42 U.S.C. 3030g] The Commissioner, in consultation with organizations of and for the aged, blind, and disabled, and with representatives from the American Dietetic Association, the National[12] Association of Area Agencies on Aging, the National Association of Nutrition and Aging Services Programs, the National Association of Meals Programs, Incorporated, and any other appropriate group, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 336. The criteria required by this section shall take into account the ability of established home delivered meals programs to continue such services without major alteration in the furnishing of such services.

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DEMONSTRATION PROJECTS

SEC. 422. [42 U.S.C. 3035a] (a)(1)[13] The Commissioner may, after consultation with the State agency in the State involved, make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization within such State for paying part or all of the cost of developing or operating nationwide, statewide, regional, metropolitan area, county, city, or community model projects which will demonstrate methods to improve or expand supportive services or nutrition services or otherwise promote the well-being of older individuals. The Commissioner shall give special consideration to the funding of rural area agencies on aging to conduct model projects devoted to the special needs of the rural elderly. Such projects shall include alternative health care delivery systems, advocacy and outreach programs, and transportation services.

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[11] P.L. 100-175, §146(b), added this sentence.
[12] P.L. 100-175, §182(n), inserted "National".
[13] P.L. 100-175, §152(1)(A), inserted "(1)".

(2) The Commissioner may, after consultation with the State agency in the State involved, make grants to or enter into contracts with public or private institutions of higher education having graduate programs with capability in public health, the medical sciences, psychology, pharmacology, nursing, social work, health education, nutrition, or gerontology, for the purpose of designing and developing prototype health education and promotion programs for the use of State and area agencies on aging in implementing preventive health service programs.[14]

(b) In making grants and contracts under subsection (a)(1)[15], the Commissioner shall give special consideration to projects designed to—

(1) meet the supportive services needs of elderly victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction[16] and their families, including—

(A) home health care for such victims;

(B) adult day health care for such victims; and

(C) homemaker aides, transportation, and in-home respite care for the families, particularly spouses, of such victims;

(2) meet the special health care needs of the elderly, including—

(A) the location of older individuals who are in need of mental health services;

(B) the provision of, or arrangement for the provision of, medical differential diagnoses of older individuals to distinguish between their need for mental health services and other medical care;

(C) the specification of the mental health needs of older individuals, and the mental health and support services required to meet such needs;[17]

(D) the provision of—

(i) the mental health and support services specified in subclause (C) in the communities; or

(ii) such services for older individuals in nursing homes and intermediate care facilities, and training of the employees of such homes and facilities in the provision of such services; and[18]

(E) the identification and provision of services to older individuals with severe disabilities;[19]

(3) assist in meeting the special housing needs of older individuals by—

(A) providing financial assistance to such individuals, who own their own homes, necessary to enable them (i) to make the repairs or renovations to their homes, which are necessary for them to meet minimum standards, and (ii) to install security devices, and to make structural modifications or alterations, designed to prevent unlawful entry; and

(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals suffering from physical disabilities;

(4) provide education and training to older individuals designed to enable them to lead more productive lives by broadening the education, occupational, cultural, or social awareness of such older individuals;

(5) provide preretirement education information and relevant services (including the training of personnel to carry out such programs and the conduct of research with respect to the development and operation of such programs) to individuals planning retirement;

(6) meet the special needs of, and improve the delivery of services to, older individuals who are not receiving adequate services under other provisions of this Act, with emphasis on the needs of low-income, minority, Indian, and limited English-speaking individuals and the rural elderly;

(7) develop or improve methods of coordinating all available supportive services for the homebound elderly, blind, and disabled by establishing demonstration projects in ten States, in accordance with subsection (c);[20]

(8) improve transportation systems for the rural elderly; and[21]

(9) provide expanded, innovative volunteer opportunities to older individuals which are designed to fulfill unmet community needs, while at the same time avoiding duplication of existing volunteer programs, which may include—

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[14]P.L. 100-175, §152(1)(B), added paragraph (2).

[15]P.L. 100-175, §151(2), struck out "this section" and substituted "subsection (a)(1)".

[16]P.L. 100-175, §182(o), struck out "Alzheimers' disease and other organic and neurological brain disorders of the Alzheimers' type" and substituted "Alzheimer's disease and related disorders with neurological and organic brain dysfunction".

P.L. 100-628, §705(8)(A), made the same amendment.

[17]P.L. 100-175, §156(c)(1), struck out "and".

[18]P.L. 100-175, §156(c)(2), inserted "and".

[19]P.L. 100-175, §156(c)(3), added subparagraph (E).

[20]P.L. 100-175, §153(1), struck out "and".

[21]P.L. 100-175, §153(2), struck out the period and substituted "; and".

(A) projects furnishing intergenerational services by older individuals addressing the needs of children, such as—

(i) tutorial services in elementary and special schools;

(ii) after school programs for latch key children;

(iii) voluntary services for day care center programs; and

(B) volunteer service credit projects operated in conjunction with the ACTION Agency[22], permitting elderly volunteers to earn credits for services furnished, which may later be redeemed for similar volunteer services.[23]

(c) The Commissioner shall consult with the Commissioner of the Rehabilitation Services Administration, the Commissioner of the Social Security Administration, and the Surgeon General of the Public Health Service, to develop procedures for—

(1) identifying elderly, blind, and disabled individuals who need supportive services;

(2) compiling a list in each community of all services available to the elderly, blind, and disabled; and

(3) establishing an information and referral service within the appropriate community agency to—

(A) inform those in need of the availability of such services; and

(B) coordinate the delivery of such services to the elderly, blind, and disabled.

The Commissioner shall establish procedures for administering demonstration projects under subsection (b)(6) not later than 6 months after the effective date of this subsection. The Commissioner shall report to the Congress with respect to the results and findings of the demonstration projects conducted under this section at the completion of the projects.

(d)(1) Whenever appropriate, grants made and contracts entered into under this section shall be developed in consultation with an appropriate gerontology center.

(2) Grants made and contracts entered into under this section shall include provisions for the appropriate dissemination of project results.

[*Internal References.*—Social Security Act §§1819(c) and (g) and 1919(c) and (g) cite the Older Americans Act of 1965. Social Security Act titles IV, XVIII, and XIX, and §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), and 1612(b) have footnotes referring to P.L. 89-73.]

P.L. 89-97, Approved July 30, 1965 (79 Stat. 286)
Social Security Amendments of 1965

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TRANSITIONAL PROVISION ON ELIGIBILITY OF PRESENTLY UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

SEC. 103. [42 U.S.C. 426a] (a) Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in title II of the Social Security Act or section 5(l) of the Railroad Retirement Act of 1937), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 202 of the Social Security Act would not be, entitled to hospital insurance benefits under section 226 of such Act, and is not certifiable as a qualified railroad retirement beneficiary under section 21 of the Railroad Retirement Act of 1937 (as added by section 105(a) of this Act),

(4) is a resident of the United States (as defined in section 210(i) of the Social Security Act), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

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[22] P.L. 100-628, §705(8)(B), struck out "ACTION" and substituted "the ACTION Agency".
[23] P.L. 100-175, §153(3), added paragraph (9).

shall (subject to the limitations in this section) be deemed, solely for purposes of section 226 of the Social Security Act, to be entitled to monthly insurance benefits under such section 202 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 202 of such Act would become) entitled to hospital insurance benefits under section 226 or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) The provisions of subsection (a) shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 210(a)(17) of the Social Security Act,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 202(u) of the Social Security Act, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5, United States Code,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of title XVIII of such Act with respect to individuals who are entitled to hospital insurance benefits under section 226 of such Act solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

SEC. 104. * * *

(b)(1) [42 U.S.C. 1395l note] No payments shall be made under part B of title XVIII of the Social Security Act with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act (relating to suspension of benefits of aliens who are outside the United States).

(2) [42 U.S.C. 1395o note] An individual who has been convicted of any offense under (A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended, may not enroll under part B of title XVIII of the Social Security Act.

SEC. 105. (a) * * *

(2) [45 U.S.C. 228s-2 note] For purposes of section 21 of the Railroad Retirement Act of 1937 (and sections 1840, 1843, and 1870 of the Social Security Act), entitlement to an annuity or pension under the Railroad Retirement Act of 1937 shall be deemed to include entitlement under the Railroad Retirement Act of 1935.

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MEANING OF TERM "SECRETARY"

SEC. 110. [42 U.S.C. 1301 note] As used in this Act, and in the provisions of the Social Security Act amended by this Act, the term "Secretary", unless the context otherwise requires, means the Secretary of Health, Education, and Welfare[1].

SEC. 111. * * *

(d) [42 U.S.C. 1395i-1] There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of title XVIII of such Act with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 226(c) of such Act) and who are not, and upon filing application for monthly insurance benefits under section 202 of such Act would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under part A of title XVIII of the Social Security Act.

(e) [42 U.S.C. 1395i-1 note] (1) The amendments made by the preceding provisions of this section shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act provides may be counted for such calendar year.

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SEC. 121. * * *

(b) [42 U.S.C. 1396b note] No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act, or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972, Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be) provided under a State plan approved under title XIX of such Act by an institution certified under such title XIX.

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[*Internal References.*—Social Security Act §§226(h), 1818(c), and 1869(b) cite the Social Security Amendments of 1965. Social Security Act titles I, IV, X, XIV, and XVI (State) and §1817 (catchline) have footnotes referring to P.L. 89-97.]

P.L. 89-117, Approved August 10, 1965 (79 Stat. 451)
Housing and Urban Development Act of 1965[1]

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SEC. 101. [12 U.S.C. 1701s] (a) The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to make, and contract to

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[1] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

[1] See P.L. 94-375, §2(h), with respect to exclusion of assistance under P.L. 89-117, §101, from income and resources for purposes of title XVI of the Social Security Act, in Vol. II, p. 673.

make, annual payments to a "housing owner" on behalf of "qualified tenants", as those terms are defined herein, in such amounts and under such circumstances as are prescribed in or pursuant to this section. In no case shall a contract provide for such payments with respect to any housing for a period exceeding forty years. The aggregate amount of the contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contract shall not exceed $150,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $40,000,000, on July 1, 1969, by $100,000,000 on July 1, 1970, and by $40,000,000 on July 1, 1971.

(b) As used in this section, the term "housing owner" means a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under section 221(d)(3) of the National Housing Act and which, after the enactment of this section[2], has been approved for mortgage insurance thereunder and has been approved for receiving the benefits of this section: *Provided*, That, except as provided in subsection (h), no payments under this section may be made with respect to any property financed with a mortgage receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of that Act. Such term also includes a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is the owner of a rental or cooperative housing project financed under a State or local program providing assistance through loans, loan insurance, or tax abatement and which may involve either new or existing construction and which is approved for receiving the benefits of this section. Subject to the limitations provided in subsection (h), the term "housing owner" also has the meaning prescribed in such subsection. Nothing in this section shall be construed as preventing payments to a housing owner with respect to projects in which all or part of the dwelling units do not contain kitchen facilities; but of the total amount of contracts to make annual payments approved in appropriation Acts pursuant to subsection (a) after the date of enactment of the Housing and Urban Development Act of 1970[3], not more than 10 per centum in the aggregate shall be made with respect to such projects.

(c) As used in this section, the term—

(1) "qualified tenant" means any individual or family having an income which would qualify such individual or family for assistance under section 8 of the United States Housing Act of 1937, except that such term shall also include any individual or family who was receiving assistance under this section on the day preceding the date of the enactment of the Housing and Community Development Amendments of 1979, so long as such individual or family continues to meet the conditions for such assistance which were in effect on such day; and

(2) "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

The terms "qualified tenant" and "tenant" include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership to the cooperative, will not be reimbursed for any equity increment accumulated through payments under this section. With respect to members of a cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between such members and the cooperative.

(d) The amount of the annual payment with respect to any dwelling unit shall be the lesser of (1) 70 per centum of the fair market rent, or (2) the amount by which the fair market rental for such unit exceeds 30 per centum of the tenant's adjusted income.

(e) (1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges.[4]

(2) Procedures adopted by the Secretary hereunder shall provide for recertifications of the incomes of occupants no less frequently than annually for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this section for any dwelling exceed the fair market rental of the dwelling.

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[2]August 10, 1965 (P.L. 89-117, 79 Stat. 451).

[3]December 31, 1970 (P.L. 91-609, 84 Stat. 1770).

[4]P.L. 100-242, §168(1), struck out "The Secretary shall issue, upon the request of a housing owner, certificates as to the following facts concerning the individuals and families applying for admission to, or residing in, dwellings of such owner:

(A) the income of the individual or family; and

(B) whether the individual or family was occupying substandard housing, was paying more than 50 per centum of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section.".

(3) The Secretary may enter into agreements, or authorize housing owners to enter into agreements, with public or private agencies for services required in the selection of qualified tenants, including those who may be approved, on the basis of the probability of future increases in their incomes, as lessees under an option to purchase (which will give such approved qualified tenants an exclusive right to purchase at a price established or determined as provided in the option) dwellings, and in the establishment of rentals. The Secretary is authorized (without limiting his authority under any other provision of law) to delegate to any such public or private agency his authority to issue certificates pursuant to this subsection.

(4) No payments under this section may be made with respect to any property for which the costs of operation (including wages and salaries) are determined by the Secretary to be greater than similar costs of operation of similar housing in the community where the property is situated.

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[*Internal References.*—Social Security Act §1612(b) cites the Housing and Urban Development Act of 1965. Social Security Act §§1612(b) and 1613(a) have footnotes referring to P.L. 89-117; and P.L. 94-375, §2(h), cites the Housing and Urban Development Act of 1965.]

P.L. 89-329, Approved November 8, 1965 (79 Stat. 1219)
Higher Education Act of 1965

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Title IV—Student Assistance

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

STATEMENT OF PURPOSE; PROGRAM AUTHORIZATION

SEC. 401. [20 U.S.C. 1070] (a) PURPOSE.—It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 484) in institutions of higher education by—

(1) providing basic educational opportunity grants to all eligible students;

(2) providing supplemental educational opportunity grants to those students who demonstrate financial need;

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Part F—NEED ANALYSIS

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COST OF ATTENDANCE

SEC. 472. [20 U.S.C. 1087ll] For the purpose of this title (except for subpart 1 of part A and subject to section 478), the term "cost of attendance" means—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

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STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS[1]

SEC. 479B. [20 U.S.C. 1087uu] (a) ATTENDANCE COSTS NOT TREATED AS INCOME OR RESOURCES.—The portion of any student financial assistance received under this title,

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[1] P.L. 100-50, §14(27), amended §479B in its entirety.

or under Bureau of Indian Affairs student assistance programs, that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) ATTENDANCE COSTS.—The attendance costs described in this subsection are—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

NATIVE AMERICAN STUDENTS[1]

SEC. 479C. [20 U.S.C. 1087uu-1] In determining family contributions for Native American students, computations performed pursuant to this part shall exclude—

(1) any income and assets of $2,000 or less per individual payment received by the student (and spouse) and student's parents under the Per Capita Act or the Distribution of Judgment Funds Act; and

(2) any income received by the student (and spouse) and student's parents under the Alaskan Native Claims Settlement Act or the Maine Indian Claims Settlement Act.

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PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

DEFINITIONS

SEC. 481. [20 U.S.C. 1088] (a) INSTITUTION OF HIGHER EDUCATION.—(1) For the purpose of this title, except subpart 6 of part A and part B, the term "institution of higher education" includes, in addition to the institutions covered by the definition contained in section 1201(a)—

(A) a proprietary institution of higher education;

(B) a postsecondary vocational institution;

(C) a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing; and

(D) a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively an accredited 2-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree.

(2) The term "accredited" when applied to any program of nurse education means a program accredited by a recognized body or bodies approved for such purpose by the Secretary.

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[*Internal References.*—Social Security Act §402(a) cites the Higher Education Act of 1965. Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 89-329.]

P.L. 89-642, Approved October 11, 1966 (80 Stat. 885)
Child Nutrition Act of 1966

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SEC. 11.

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[1]P.L. 100-50, §14(27), added §479C.

(b) [42 U.S.C. 1780] The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this Act.

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SPECIAL SUPPLEMENTAL FOOD PROGRAM

SEC. 17. [42 U.S.C. 1786] (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse,[1] and improve the health status of these persons.

(b) As used in this section—

(1) "Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

(2) "Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) "Competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) "Costs for nutrition services and administration" means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) "Infants" means persons under one year of age.

(6) "Local agency" means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) "Nutrition education" means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(8) "Nutritional risk" means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, or (D) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, alcoholism and drug addiction.

(9) "Plan of operation and administration" means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) "Postpartum women" means women up to six months after termination of pregnancy.

(11) "Pregnant women" means women determined to have one or more fetuses in utero.

(12) "Secretary" means the Secretary of Agriculture.

(13) "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the

[1] P.L. 100-690, §3201(1), inserted ", including drug abuse,".

Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) "Homeless individual" means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.[2]

(16) "Drug abuse education" means—

(A) the provision of information concerning the dangers of drug abuse;

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals; and

(C) the provision of materials developed by the Secretary under subsection (n).[3]

(c)(1) The Secretary may carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the food stamp program;

(B) any program under which foods are distributed to needy families in lieu of food stamps; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.[4]

(2) Subject to amounts appropriated to carry out this section under subsection (g)—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d)(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for

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[2] P.L. 100-435, §212(a), added paragraph (15).
[3] P.L. 100-690, §3201(2), added paragraph (16).
[4] P.L. 100-435, §212(b), amended this sentence in its entirety.

participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 9 of the National School Lunch Act.

(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(4) The Secretary shall report biennially to Congress on—

(A) the income and nutritional risk characteristics of participants in the program;

(B) participation in the program by members of families of migrant farmworkers; and

(C) such other matters relating to participation in the program as the Secretary considers appropriate.

(e)(1) The State agency shall ensure that nutrition education and drug abuse education[5] is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education[6] to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.

(2) The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(f)(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

(ii) a description of the financial management system of the State agency;

(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, drug abuse education,[7] alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, maternal and child health care, and medicaid[8] programs;

(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals,[9] and Indians;

(v) a plan to expend funds to carry out the program during the relevant fiscal year;

(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable;[10]

(viii) if the State agency chooses to request the funds conversion authority established in clause (h)(5) of this section, an estimate of the increased participation which will result from its cost-saving initiative, including an explanation of how the estimate was developed; and[11]

(ix)[12] such other information as the Secretary may require.

(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

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[5]P.L. 100-690, §3201(3), inserted "and drug abuse education".
[6]See footnote 5.
[7]P.L. 100-690, §3201(4)(A), inserted "drug abuse education,".
[8]P.L. 100-237, §9, struck out "and maternal and child health care" and substituted "maternal and child health care, and medicaid".
[9]P.L. 100-435, §212(c)(1), inserted ", homeless individuals,".
[10]P.L. 100-237, §8(b)(1), struck out "and".
[11]P.L. 100-237, §8(b)(3), added this clause (viii).
[12]P.L. 100-237, §8(b)(2), redesignated the former clause (viii) as clause (ix).

(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program. Each State agency shall be responsible for admininstering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6) The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.

(7) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence,[13] and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(9) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(10) If a person certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that person's certification of eligibility shall remain valid for the period for which the person was originally certified.

(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of

[13] P.L. 100-435, §212(c)(2), inserted "organizations and agencies serving homeless individuals and shelters for victims of domestic violence,".

such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate. Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals[14].

(14) The State agency shall (A) provide nutrition education and drug abuse education[15] materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(16) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.); and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.[16]

(17) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.[17]

(g)(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, and[18] such sums as may be necessary for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.[19]

(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(3) Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing the report required under subsection (d)(4), providing technical assistance to improve State agency administrative systems, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(h)(1) The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration. When reallocating funds, the Secretary may exceed the 20 percent limitation for costs for nutrition services and administration if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program. Not less than one-sixth of the funds expended by each State agency for costs for nutrition services and administration under this subsection shall be used for nutrition education activities, unless the State agency requests that it be authorized to expend a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities. The Secretary shall limit to a minimal level any documentation required under the preceding sentence.

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[14] P.L. 100-435, §212(c)(3), inserted ", and, in the case of homeless individuals, the special needs and problems of such individuals".

[15] P.L. 100-690, §3201(4)(B), inserted "and drug abuse education".

[16] P.L. 100-237, §11, added paragraph (16).

[17] P.L. 100-435, §212(c)(4), added paragraph (17).

[18] P.L. 100-71, 101 Stat. 425, inserted "and".

[19] P.L.100-71, 101 Stat. 426, struck out "and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989." and substituted "September 30, 1988, and September 30, 1989.".

(2) The Secretary, for each of the fiscal years 1979 through 1989, shall allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

(3) Each State agency shall provide, from its allocation for funds for nutrition services and administration, funds to local agencies for their costs for nutrition services and administration. Each State agency shall distribute funds for nutrition services and administration to local agencies under allocation standards developed by the State agency in cooperation with the several local agencies. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(4) The State agency may forward in advance to local agencies those funds for nutrition services and administration necessary for successful commencement of program operations under this section during the three months following approval or until a program reaches its projected caseload level, whichever comes first.

(5)(A) In addition to the amounts otherwise made available under paragraphs (1) and (2), each State agency may convert funds initially allocated to the State agency for program food purchases to nutrition services and administration funds for the cost of the State agency and local agencies associated with increases in the number of persons served, if the State agency has implemented a competitive bidding, rebate, direct distribution, or home delivery system as described in its approved Plan of Operation and Administration.

(B) The Secretary shall—

(i) project each such State agency's level of participation for the fiscal year, excluding anticipated increases due to use during the fiscal year of any of the cost-saving strategies identified in subparagraph (A) of this paragraph; and

(ii) compute, with an adjustment for the anticipated effects of inflation, each such State agency's average administrative grant per participant for the preceding fiscal year.

(C) Each such State agency may convert funds, at a rate equal to the amount established by the Secretary under subparagraph (B)(ii) of this paragraph for each food package distributed to each additional participant above the participation level projected by the Secretary under subparagraph (B)(i) of this paragraph, up to the level of increased participation estimated in its approved Plan of Operation and Administration.[20]

(D) Following the implementation of an approved cost-saving strategy identified in subsection (h)(5)(A), a State agency may convert, in addition to funds otherwise converted to nutrition services and administration funds under subparagraphs (A), (B), and (C) of subsection (h)(5), food funds initially allocated to the State agency for program food purchases to nutrition services and administration funds. The amount of funds converted shall be limited to an amount sufficient to ensure that there is no more than a 2 percent annual decrease in the State agency's administrative grant per person if a larger decrease would otherwise result from increased program participation due to the cost-saving system of the State.[21]

(E) For each such State agency, the total amount of funds transferred from any fiscal year shall not exceed the amounts set forth in section 17(i)(3)(D).[22]

(i)(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraphs (B) and (C)[23]—

(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; and[24]

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[20] P.L. 100-237, §8(a), added paragraph (5).
[21] P.L. 100-356, §3(a), added subparagraph (D).
[22] P.L. 100-356, §3(a), added subparagraph (E).
[23] P.L. 100-237, §12(1)(A), inserted "and subject to subparagraphs (B) and (C)".
[24] P.L. 100-237, §12(1)(B), struck out "or" and substituted "and".

(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) The total amount of funds transferred from any fiscal year under clauses (i) and (ii) of subparagraph (A) shall not exceed 1 percent of the amount of the funds allocated to a State agency for such fiscal year.[25]

(D) For State agencies implementing approved cost-savings strategies as identified in subsection (h)(5)(A), not more than 5 percent of the amount of funds allocated under this section to such a State agency for supplemental foods for the fiscal year in which the system is implemented, and at the discretion of the Secretary, up to 5 percent of the amount of funds allocated to such a State agency for the fiscal year following the fiscal year in which the system is implemented, may be expended by the State agency for expenses incurred under this section for supplemental foods during the succeeding fiscal year.[26]

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(j) By October 1 of each year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the "Council") composed of twenty-three[27] members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental food program; one member shall be a person involved at the retail sales level of food in the special supplemental food program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services;[28] two members shall be officials of the Department of Agriculture appointed by the Secretary; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention[29].

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

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[25] P.L. 100-237, §12(2), added subparagraph (C).
[26] P.L. 100-356, §3(b), added subparagraph (D).
[27] P.L. 100-690, §3201(5)(A), struck out "twenty-one" and substituted "twenty-three".
[28] P.L. 100-690, §3201(5)(B)(i), struck out "and".
[29] P.L. 100-690, §3201(5)(B)(ii), inserted "; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention".

(3) The Secretary shall designate a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.

(5) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(6) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(l) Foods available under section 416 of the Agriculture Act of 1949, including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m)(1) Subject to the availability of funds appropriated for purposes of this subsection, the Secretary shall award a 3-year grant to up to 10 States that submit applications that are approved for the establishment of demonstration projects designed to provide recipients of assistance under subsection (c) with coupons that may be exchanged for foods at farmers' markets.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) assure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless such State agrees to provide State funds for the demonstration project in an amount that is equal to not less than 30 percent of the total cost of the demonstration project which may be satisfied from State contributions that are made for similar projects.

(4)(A) The Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which an application is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the application of the State.

(B) If the sums appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which an application is approved under paragraph (6) the amount which the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced.

(5) Each State that receives a grant under this subsection shall ensure that the demonstration project for which the grant is received complies with the following requirements:

(A) Persons who are eligible to receive Federal benefits under the project shall only be persons who are receiving assistance under subsection (c).

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefit received by any recipient under the project may not be—

(i) less than $10 per year; or

(ii) more than $20 per year.

(D) The coupon issuance process under the project shall be designed to ensure that coupons target areas with—

(i) the highest concentration of eligible persons;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary that maximize the availability of benefits to eligible persons.

(E) The coupon redemption process under the project shall be designed to ensure that coupons may be—

(i) redeemed only by producers authorized by the State to participate in the project; and

(ii) redeemed only to purchase unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may not use for administration of such project for any fiscal year more than 10 percent of the total amount of project funds.

(ii) On the showing by the State of substantial need, the Secretary may permit a State to use up to an additional two percent of the total project funds for administration of such project for any fiscal year.

(iii) The provisions of clauses (i) and (ii) with respect to the use of project funds for the administration of the project shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements under subparagraph (B).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the project.

(6)(A) A State that desires to receive a grant under this subsection shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B)(i) Each application submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by such program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(ii) The criteria developed by the State as required by clause (i)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the project.

(C) The Secretary shall establish objective criteria for the approval of applications submitted under this paragraph.

(D) In approving applications submitted under this paragraph, the Secretary shall—

(i) favorably consider a State's prior experiences with programs in existence as of the date of enactment of the Hunger Prevention Act of 1988;

(ii) favorably consider a State's operation of a similar project with State or local funds that can present data concerning the value of such project, and such data can be of assistance to other States interested in developing such farmers' market coupons projects;

(iii) award a grant to at least one applicant that proposes to operate the program on a Statewide basis;

(iv) give preference to applications from States that propose projects that are determined by the Secretary to—

(I) have possible national significance; or

(II) show unusual promise in promoting similar projects;

(v) give preference to applications that show promise of continued operation of the project for which the grant is requested after the grant expires;

(vi) require that if a State receives a grant under this section and that State is operating a similar project with State or local funds, that State shall not reduce in any fiscal year the amount of State and local funds available to the project in the preceding fiscal year after receiving funds for the project under this subsection; and

(vii) give preference to applications for projects that would serve areas in the State that have—

(I) the highest concentration of eligible persons;

(II) the greatest access to farmers' markets;

(III) broad geographical area;

(IV) the greatest number of participants in the broadest geographical area within the State; and

(V) any other characteristics, as determined appropriate by the Secretary, that maximize the availability of benefits to eligible persons.

(7)(A) The value of the benefit received by any recipient under any project for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under any other State or Federal program.

(B) Any projects for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(8) Each State that receives a grant under this subsection shall submit a report to the Secretary for each year of the grant period. Each such report shall include—

(A) the number of recipients served under the project for which the grant is received;

(B) the rate of redemption of coupons distributed under the project;

(C) the types of foods purchased with the coupons;

(D) the average amount distributed in coupons to each recipient;

(E) any change in the amount of food purchased at farmers' markets after the establishment of the project;

(F) any change in the number of farmers participating in farmers' markets after the establishment of the project;

(G) a description of how coupons were distributed to and redeemed by recipients in the State project; and

(H) any other information determined to be necessary by the Secretary.

(9)(A) The Secretary shall evaluate the projects for which grants are received under this subsection and submit to the Committee on Agriculture of the House of Representatives, the Committee on Education and Labor of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on such evaluations.

(B) Such report shall be submitted before the end of the 2-year period beginning on the date that the last grant is awarded under this subsection.

(10) There are authorized to be appropriated to carry out this subsection $2,000,000 for fiscal year 1989, $2,800,000 for fiscal year 1990, and $3,500,000 for fiscal year 1991.

(11) For purposes of this subsection:

(A) The term "recipient" means a person who is chosen by a State to receive benefits under a project.

(B) The term "State agency" has the meaning provided in subsection (b)(13), except that such term also includes the agriculture department of each State.[20]

(n)(1) The Secretary, before the end of the 6-month period beginning on the date of the enactment of this Act, shall, directly or through grant or contract, conduct a study with respect to appropriate methods of drug abuse education instruction.

(2) The Secretary shall—

(A) directly, or through grant or contract, prepare materials for purposes of drug abuse education provided under this section; and

(B) distribute the materials prepared under subparagraph (A) to each State agency for distribution to local agencies participating in the program under this section.

(3) There is authorized to be appropriated—

(A) $500,000 for the fiscal year 1989 for purposes of carrying out the study required by paragraph (1);

(B) $2,750,000 for the fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year for purposes of preparing drug abuse education materials as required by paragraph (2)(A); and

(C) $6,750,000 for the fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year for purposes of—

(i) distributing drug abuse education materials as required by paragraph (2)(B); and

(ii) making referrals under drug abuse education programs.

(4) The State agency, in each fiscal year, shall provide drug abuse education to participants in the program under this section commensurate with amounts appropriated for such fiscal year pursuant to the authorizations contained in paragraph (3).[21]

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[*Internal References.*—Social Security Act §1920(b) cites the Child Nutrition Act of 1966. The catchlines to Social Security Act §§1612(b) and 1613(a) and §§402(a) and 1002(a) have footnotes referring to P.L. 89-642.]

P.L. 89-750, Approved November 3, 1966 (80 Stat. 1191)
Elementary and Secondary Education Amendments of 1966

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SEC. 301. [20 U.S.C. 1201 note] SHORT TITLE.[1]

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[20]P.L. 100-435, §501(b), added subsection (m).
[21]P.L. 100-690, §3201(6), added subsection (n).
[1]P.L. 100-297, §2102, amended the Adult Education Act in its entirety.

This title may be cited as the "Adult Education Act".

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SEC. 312. [20 U.S.C. 1201a] DEFINITIONS.
As used in this title—

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(8) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then such agency or officer may be designated for the purpose of this title by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, such term shall mean an appropriate agency or officer designated for the purposes of this title by the Governor.

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SEC. 322. [20 U.S.C. 1203a] USE OF FUNDS; LOCAL APPLICATIONS.
(a) USE OF FUNDS.—

(1) Grants to States under this subpart shall be used in accordance with State plans (and amendments thereto) approved under sections 341 and 351, to pay the Federal share of the cost of the establishment or expansion of adult education programs to be carried out by local educational agencies and by public or private nonprofit agencies, organizations, and institutions. Grants provided under this section to States to carry out the programs described in the preceding sentence may be carried out by public or private nonprofit agencies, organizations, and institutions only if the applicable local educational agency has been consulted with and has had an opportunity to comment on the application of such agency, organization, or institution. The comments of the local educational agency, and responses thereto, shall be attached to the application when it is forwarded to the State.

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(3) The State educational agency shall not approve any application unless evidence that any consultation required by paragraph (1) has taken place is provided. Such application shall contain such information as the State educational agency considers necessary, including a description of current programs, activities, and services receiving assistance from Federal, State, and local sources; cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults as well as assurances that adult educational programs, services, or activities provided under this title are coordinated with and not duplicative of services, programs, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

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SEC. 331. [20 U.S.C. 1205] STATE ADMINISTRATION.
(a) STATE AGENCY RESPONSIBILITIES.—Any State desiring to participate in the programs authorized by this title shall designate the State educational agency to be the sole State agency responsible for the administration and supervision of such programs. The responsibilities of the State agency shall include—

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(2) consultation with the State advisory council established pursuant to section 332, and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under this title; and

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SEC. 342. [20 U.S.C. 1206a] FOUR-YEAR STATE PLAN.
(a) * * *

(3)(A) Not less than 60 days before submission of the State plan to the Secretary under section 341, the State agency shall simultaneously submit the proposed State plan to (i) the State Board or agency for vocational education, (ii) the State Job Training Coordinating Council under the Job Training Partnership Act, and (iii) the

State Board responsible for postsecondary education for review and comment. Such comments (to the extent such comments are received in a timely fashion) and the State's response shall be included with the State plan submitted to the Secretary. The Secretary shall consider such comments in reviewing such plan.

(B) Not less than 60 days before the submission of the State plan to the Secretary, such plan shall be submitted to the State advisory council (if such a council exists). Should the State advisory council find that it has substantial disagreement with the final State plan, the Council may file timely objections with the State agency. The State agency shall respond to all substantial objections of the State advisory council in submitting such plan to the Secretary. The Secretary shall consider such comments in reviewing the State plan.

(b) REQUIRED ASSESSMENTS.—In developing the 4-year State plan, each State shall (1) make a thorough assessment of (A) the needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those served and (B) the capability of existing programs and institutions to meet those needs, and (2) state the changes and improvements required in adult education to fulfill the purposes of this title, and the options for implementing these changes and improvements.

(c) COMPONENTS OF STATE PLAN.—Consistent with the assessments described in subsection (b) each such plan shall—

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(11) describe the methods proposed for the joint planning and coordination of programs carried out under this title with those conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act of 1963, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to assure maximum use of funds under these Acts and to avoid duplication of services;

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[*Internal Reference.*—Social Security Act §483(c) cites the Adult Education Act.]

P.L. 90-248, Approved January 2, 1968 (81 Stat. 821)

Social Security Amendments of 1967

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SEC. 202.* * *

(d) [42 U.S.C. 602 note] Effective with respect to quarters beginning after June 30, 1968, in determining the need of individuals claiming aid under a State plan approved under part A of title IV of the Social Security Act, the State shall apply the provisions of such part notwithstanding any provisions of law (other than such Act) requiring the State to disregard earned income of such individuals in determining need under such State plan.

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SEC. 234.* * *

(c) [42 U.S.C. 1396a note] Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.

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SEC. 248.* * *

(c) [42 U.S.C. 602 note] Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a)(7) of such Act as in effect before the enactment of this Act

nor the provisions of section 402(a)(8) of such Act as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act shall provide for the disregarding of income in making the determination under section 402(a)(7) of such Act in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a)(8) of such Act to reflect appropriately the applicable differences in income levels.

(d) [42 U.S.C. 1396b note] The amendment made by section 220(a) of this Act shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.

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INCENTIVES FOR ECONOMY WHILE MAINTAINING OR IMPROVING QUALITY IN THE PROVISION OF HEALTH SERVICES[1]

SEC. 402. [42 U.S.C. 1395b-1] (a)(1) The Secretary of Health, Education, and Welfare is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 401(c) of the Mental Retardation Facilities and Community Health Centers Construction Act of 1963),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by the Social Security Act, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

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[1] See 38 U.S.C. 5053, with respect to the provision of hospital care or medical services by the Veterans Administration; Vol. II, p. 221.

See P.L. 95-210, [Social Security-Rural Health Clinic Services], §3, with respect to demonstration projects; Vol. II, p. 686.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(i), with respect to hospice demonstration projects and a report to Congress; Vol. II, p. 743.

See P.L. 99-509, "Omnibus Budget Reconciliation Act of 1986", §9307(b), with respect to the Massachusetts medicare repayment.

See P.L. 100-203, "Omnibus Budget Reconciliation Act of 1987", §4015, with respect to Medicare payment demonstration projects; §4027, with respect to the home health prospective payment demonstration project for which the Secretary shall provide, and §4403(b), with respect to rural health research and demonstration projects; Vol. II, p. 850.

See P.L. 100-360, "Medicare Catastrophic Coverage Act of 1988", §222, with respect to adjustment of contracts with prepaid health plans; Vol. II, p. 891.

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under title XVIII of the Social Security Act; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by the Social Security Act;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by the Social Security Act for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of title XVIII and title XIX of the Social Security Act, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under titles XVIII and XIX of this Act in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of title XI would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, "health programs established by the Social Security Act" means the program established by title XVIII of such Act and a program established by a plan of a State approved under title XIX of such Act.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) In the case of any experiment or demonstration project under subsection (a), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with

such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

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[*Internal References.*—Social Security Act §§202(t), 215(d), 216(i), 1814(b), 1866(a), 1875(b) and 1886(c) cite the Social Security Amendments of 1967. Social Security Act §§2(a), 402(a), 1002(a), 1402(a) and 1602(a)(State) and the catchline to title I have footnotes referring to P.L. 90-248.]

P.L. 90-321, Approved May 29, 1968 (82 Stat. 146)
Consumer Credit Protection Act

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RESTRICTION ON GARNISHMENT

SEC. 303. [15 U.S.C. 1673] (a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed[1]

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(b)(1) The restrictions of subsection (a) do not apply in the case of[2]

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

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EXEMPTION FOR STATE-REGULATED GARNISHMENTS

SEC. 305. [15 U.S.C. 1675] The Secretary of Labor may by regulation exempt from the provisions of section 303(a) and (b)(2) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a) and (b)(2).

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[1] As in original. No punctuation.
[2] See footnote 1.

TITLE VI—CONSUMER CREDIT REPORTING

SEC. 601. Short title [15 U.S.C. 1601 note]
This title may be cited as the "Fair Credit Reporting Act".

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SEC. 603. [15 U.S.C. 1681a] * * *
(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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TITLE IX—ELECTRONIC FUND TRANSFERS

SHORT TITLE

SEC. 901. [15 U.S.C. 1601 note] This title may be cited as the "Electronic Fund Transfer Act".

FINDINGS AND PURPOSE

SEC. 902. [15 U.S.C. 1693] (a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

DEFINITIONS

SEC. 903. [15 U.S.C. 1693a] As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account:[3]

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[3]As in original. Probably should be a semicolon.

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

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TERMS AND CONDITIONS OF TRANSFERS

SEC. 905. [15 U.S.C. 1693c] (a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosure shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than[4] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

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[4]As in original. Should be "that".

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 910; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) A financial institution shall notify a consumer in writing at le[illegible] twenty-one days prior to the effective date of any change in any term or cond[illegible] of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this title, the information required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 906(c) after the effective date of this title; or

(2) thirty days after the effective date of this title.

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ISSUANCE OF CARDS OR OTHER MEANS OF ACCESS

SEC. 911. [15 U.S.C. 1693i] (a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

SUSPENSION OF OBLIGATIONS

SEC. 912. [15 U.S.C. 1693j] If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

COMPULSORY USE OF ELECTRONIC FUND TRANSFERS

SEC. 913. [15 U.S.C. 1693k] No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

WAIVER OF RIGHTS

SEC. 914. [15 U.S.C. 1693l] No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

CIVIL LIABILITY

SEC. 915. [15 U.S.C. 1693m] (a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

CRIMINAL LIABILITY

SEC. 916. [15 U.S.C. 1693n] (a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

ADMINISTRATIVE ENFORCEMENT

SEC. 917. [15 U.S.C. 1693o] (a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.[3]

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

(5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may

[3] As in original. Probably should be a semicolon.

exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

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RELATION TO STATE LAWS

SEC. 919. [15 U.S.C. 1693q] This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

EXEMPTION FOR STATE REGULATION

SEC. 920. [15 U.S.C. 1693r] The Board shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

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[*Internal References.*—Social Security Act §§465(a) and 466(b) cite the Fair Credit Reporting Act (Title VI of P.L. 90-321). The catchlines to SSAct §§205 and 1631 have footnotes referring to P.L. 90-321.]

P.L. 90-486, Approved August 13, 1968 (82 Stat. 755)
National Guard Technicians Act of 1968

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SEC. 6. [32 U.S.C. 709 note] (a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act, is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act, not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act; or

(2) is on active duty under section 265, 3015, 3033, 3496, 8033 or 8496 of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled.

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[*Internal Reference.*—Social Security Act §218(b) cites the National Guard Technicians Act of 1968.]

P.L. 91-173, Approved December 30, 1969 (83 Stat. 742)
Federal Mine Safety and Health Act of 1977[1] (As Amended)

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TITLE IV—BLACK LUNG BENEFITS

Part A—General

SEC. 401. [30 U.S.C. 901] (a) Congress finds and declares that there are a significant number of coal miners living today who are totally disabled due to pneumoconiosis arising out of employment in one or more of the Nation's coal mines; that there are a number of survivors of coal miners whose deaths were due to this disease; and that few States provide benefits for death or disability due to this disease to coal miners or their surviving dependents. It is, therefore, the purpose of this title to provide benefits, in cooperation with the States, to coal miners who are totally disabled due to pneumoconiosis and to the surviving dependents of miners whose death was due to such disease; and to ensure that in the future adequate benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis.

(b) This title may be cited as the "Black Lung Benefits Act".

SEC. 402. [30 U.S.C. 902] For purposes of this title—

(a) The term "dependent" means—

(1) a child as defined in subsection (g) without regard to subparagraph (2)(B)(ii) thereof; or

(2) a wife who is a member of the same household as the miner, or is receiving regular contributions from the miner for her support, or whose husband is a miner who has been ordered by a court to contribute to her support, or who meets

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[1]Parts A and B of title IV of the Federal Mine Safety and Health Act of 1977 are administered by the Social Security Administration, Department of Health and Human Services.
Part C of title IV of the Federal Mine Safety and Health Act of 1977 is administered by the Employment Standards Administration, Department of Labor.

the requirements of section 216(b)(1) or (2) of the Social Security Act. The determination of an individual's status as the "wife" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. The term "wife" also includes a "divorced wife" as defined in section 216(d)(1) of the Social Security Act who is receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or is receiving substantial contributions from the miner (pursuant to a written agreement), or there is in effect a court order for substantial contributions to her support from such miner.

(b) The term "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment.

(c) The term "Secretary" where used in part B means the Secretary of Health, Education, and Welfare, and where used in part C means the Secretary of Labor.

(d) The term "miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. Such term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment.

(e) The term "widow" includes the wife living with or dependent for support on the miner at the time of his death, or living apart for reasonable cause or because of his desertion, or who meets the requirements of section 216(c)(1), (2), (3), (4), or (5), and section 216(k) of the Social Security Act, who is not married. The determination of an individual's status as the "widow" of a miner shall be made in accordance with section 216(h)(1) of the Social Security Act as if such miner were the "insured individual" referred to therein. Such term also includes a "surviving divorced wife" as defined in section 216(d)(2) of the Social Security Act who for the month preceding the month in which the miner died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from the miner, or was receiving substantial contributions from the miner (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from the miner at the time of his death.

(f)(1) The term "total disability" has the meaning given it by regulations of the Secretary of Health, Education, and Welfare for claims under part B of this title, and by regulations of the Secretary of Labor for claims under part C of this title, subject to the relevant provisions of subsections (b) and (d) of section 413, except that—

(A) in the case of a living miner, such regulations shall provide that a miner shall be considered totally disabled when pneumoconiosis prevents him or her from engaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity and over a substantial period of time;

(B) such regulations shall provide that (i) a deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled; and (ii) in the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her usual coal mine work, such miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled;

(C) such regulations shall not provide more restrictive criteria than those applicable under section 223(d) of the Social Security Act; and

(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).

(2) Criteria applied by the Secretary of Labor in the case of—

(A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);

(B) any claim which is subject to review by the Secretary of Labor under section 435(b); and

(C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

(g) The term "child" means a child or a step-child who is—

(1) unmarried; and

(2)(A) under eighteen years of age, or

(B)(i) under a disability as defined in section 223(d) of the Social Security Act,

(ii) which began before the age specified in section 202(d)(1)(B)(ii) of the Social Security Act, or, in the case of a student, before he ceased to be a student; or

(C) a student.

The term "student" means a "full-time student" as defined in section 202(d)(7) of the Social Security Act, or a "student" as defined in section 8101(17) of title 5, United States Code. The determination of an individual's status as the "child" of the miner or widow, as the case may be, shall be made in accordance with section 216(h)(2) or (3) of the Social Security Act as if such miner or widow were the "insured individual" referred to therein.

(h) The term "fund" means the Black Lung Disability Trust Fund established by section 9501 of the Internal Revenue Code of 1954.

(i) For the purposes of subsections (c) and (j) of section 422, and for the purposes of paragraph (7) of subsection (d) of section 9501 of the Internal Revenue Code of 1954, the term "claim denied" means a claim—

(1) denied by the Social Security Administration; or

(2) in which (A) the claimant was notified by the Department of Labor of an administrative or informal denial more than 1 year prior to the date of enactment of the Black Lung Benefits Reform Act of 1977[2] and did not, within 1 year from the date of notification of such denial, request a hearing, present additional evidence or indicate an intention to present additional evidence, or (B) the claim was denied under the law in effect prior to the date of enactment of the Black Lung Benefits Reform Act of 1977 following a formal hearing or administrative or judicial review proceeding.

Part B—Claims for Benefits Filed on or Before December 31, 1973

SEC. 411. [30 U.S.C. 921] (a) The Secretary shall, in accordance with the provisions of this part, and the regulations promulgated by him under this part, make payments of benefits in respect of total disability of any miner due to pneumoconiosis, and in respect of the death of any miner whose death was due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981[3], who at the time of his death was totally disabled by pneumoconiosis.

(b) The Secretary shall by regulation prescribe standards for determining for purposes of section 411(a) whether a miner is totally disabled due to pneumoconiosis and for determining whether the death of a miner was due to pneumoconiosis. Regulations required by this subsection shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of this title, and in no event later than the end of the third month following the month in which this title is enacted.[4] Final regulations required for implementation of any amendments to this title shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the fourth month following the month in which such amendments are enacted. Such regulations may be modified or additional regulations promulgated from time to time thereafter.

(c) For purposes of this section—

(1) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

(2) If a deceased miner was employed for ten years or more in one or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(3) If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (C) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in clause (A) or (B) if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to

[2] P.L. 95-239 (92 Stat. 95), approved March 1, 1978.
[3] January 1, 1982 [P.L. 97-119, §201(a), §206(a); 95 Stat. 1643, 1645].
[4] December 30, 1969 [P.L. 91-173; 83 Stat. 742].

pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis.[5] as the case may be.

(4) if[6] a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim under this title and it is interpreted as negative with respect to the requirements of paragraph (3) of this subsection, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where he determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that (A) such miner does not, or did not, have pneumoconiosis, or that (B) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine. The provisions of this paragraph shall not apply with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981.

(5) In the case of a miner who dies on or before the date of the enactment of the Black Lung Benefits Reform Act of 1977 who was employed for 25 years or more in one or more coal mines before June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, at the rate applicable under section 412(a)(2), unless it is established that at the time of his or her death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Secretary, furnish such evidence as is available with respect to the health of the miner at the time of his or her death. The provisions of this paragraph shall not apply with respect to claims filed on or after the day that is 180 days after the effective date of the Black Lung Benefits Amendments of 1981.

(d) Nothing in subsection (c) shall be deemed to affect the applicability of subsection (a) in the case of a claim where the presumptions provided for therein are inapplicable.

SEC. 412. [30 U.S.C. 922] (a) Subject to the provisions of subsection (b) of this section, benefit payments shall be made by the Secretary under this part as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at a rate equal to 37 1/2 per centum of the monthly pay rate for Federal employees in grade GS-2, step 1.

(2) In the case of death of a miner due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

(3) In the case of the child or children of a miner whose death is due to pneumoconiosis or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of his death, in the case of the child or children of a widow who is receiving benefits under this part at the time of her death, and in the case of any child or children entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid to such child or children as follows: If there is one such child, he shall be paid benefits at the rate specified in paragraph (1). If there is more than one such child, the benefits paid shall be divided equally among them and shall be paid at a rate equal to the rate specified in paragraph (1), increased by 50 per centum of such rate if there are two such children, by 75 per centum of such rate if there are three such children, and by 100 per centum of such rate if there are more than three such children: *Provided*, That benefits shall only be paid to a child for so long as he meets the criteria for the term "child" contained in section 402(g): *And provided further*, That no entitlement to benefits as a child shall be established under this paragraph (3) for any month for which entitlement to benefits as a widow is established under paragraph (2).

(4) In the case of an individual entitled to benefit payments under clause (1) or (2) of this subsection who has one or more dependents, the benefit payments shall be

[5] As in original. Period should be deleted.
[6] As in original. Should be "If".

increased at the rate of 50 per centum of such benefit payments, if such individual has one dependent, 75 per centum if such individual has two dependents, and 100 per centum if such individual has three or more dependents.

(5) In the case of the dependent parent or parents of a miner whose death is due to pneumoconiosis, or, except with respect to a claim filed under part C of this title on or after the effective date of the Black Lung Benefits Amendments of 1981, of a miner who is receiving benefits under this part at the time of his death or who was totally disabled by pneumoconiosis at the time of death, and who is not survived at the time of his death by a widow or a child, in the case of the dependent surviving brother(s) or sister(s) of such a miner who is not survived at the time of his death by a widow, child, or parent, in the case of the dependent parent or parents of a miner (who is not survived at the time of his or her death by a widow or a child) who are entitled to the payment of benefits under paragraph (5) of section 411(c), or in the case of the dependent surviving brother(s) or sister(s) of a miner (who is not survived at the time of his or her death by a widow, child, or parent) who are entitled to the payment of benefits under paragraph (5) of section 411(c), benefits shall be paid under this part to such parent(s), or to such brother(s), or sister(s), at the rate specified in paragraph (3) (as if such parent(s) or such brother(s) or sister(s), were the children of such miner). In determining for purposes of this paragraph whether a claimant bears the relationship as the miner's parent, brother, or sister, the Secretary shall apply legal standards consistent with those applicable to relationship determination under title II of the Social Security Act. No benefits to a sister or brother shall be payable under this paragraph for any month beginning with the month in which he or she receives support from his or her spouse, or marries. Benefits shall be payable under this paragraph to a brother only if he is—

(1)(A) under eighteen years of age, or

(B) under a disability as defined in section 223(d) of the Social Security Act which began before the age specified in section 202(d)(1)(B)(ii) of such Act, or in the case of a student, before he ceased to be a student, or

(C) a student as defined in section 402(g); or

(2) who is, at the time of the miner's death, disabled as determined in accordance with section 223(d) of the Social Security Act, during such disability. Any benefit under this paragraph for a month prior to the month in which a claim for such benefit is filed shall be reduced to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior months. As used in this paragraph, "dependent" means that during the one year period prior to and ending with such miner's death, such parent, brother, or sister was living in the miner's household, and was, during such period, totally dependent on the miner for support. Proof of such support shall be filed by such claimant within two years after the month in which this amendment is enacted,[7] or within two years after the miner's death, whichever is the later. Any such proof which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof within such period. The determination of what constitutes "living in the miner's household", "totally dependent upon the miner for support," and "good cause," shall for purposes of this paragraph be made in accordance with regulations of the Secretary. Benefit payments under this paragraph to a parent, brother, or sister, shall be reduced by the amount by which such payments would be reduced on account of excess earnings of such parent, brother, or sister, respectively, under section 203(b)-(l) of the Social Security Act, as if the benefit under this paragraph were a benefit under section 202 of such Act.

(6) If an individual's benefits would be increased under paragraph (4) of this subsection because he or she has one or more dependents, and it appears to the Secretary that it would be in the interest of any such dependent to have the amount of such increase in benefits (to the extent attributable to such dependent) certified to a person other than such individual, then the Secretary may, under regulations prescribed by him, certify the amount of such increase in benefits (to the extent so attributable) not to such individual but directly to such dependent or to another person for the use and benefit of such dependent; and any payment made under this clause, if otherwise valid under this title, shall be a complete settlement and satisfaction of all claims, rights, and interests in and to such payment.

(b) Notwithstanding subsection (a), benefit payments under this section to a miner or his widow, child, parent, brother, or sister shall be reduced, on a monthly or other appropriate basis, by an amount equal to any payment received by such miner or his

[7] May 19, 1972 [P.L. 92-303; 86 Stat. 150].

widow, child, parent, brother, or sister under the workmen's compensation, unemployment compensation, or disability insurance laws of his State on account of the disability of such miner due to pneumoconiosis, and the amount by which such payment would be reduced on account of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act. This part shall not be considered a workmen's compensation law or plan for purposes of section 224 of such Act.

(c) Benefits payable under this part shall be deemed not to be income for purposes of the Internal Revenue Code of 1954.

SEC. 413. [30 U.S.C. 923] (a) Except as otherwise provided in section 414 of this part, no payment of benefits shall be made under this part except pursuant to a claim filed therefor on or before December 31, 1973, in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe.

(b) In carrying out the provisions of this part, the Secretary shall to the maximum extent feasible (and consistent with the provisions of this part) utilize the personnel and procedures he uses in determining entitlement to disability insurance benefit payments under section 223 of the Social Security Act, but no claim for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram. In determining the validity of claims under this part, all relevant evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits of persons with knowledge of the miner's physical condition, and other supportive materials. Where there is no medical or other relevant evidence in the case of a deceased miner, such affidavits, from persons not eligible for benefits in such case with respect to claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, shall be considered to be sufficient to establish that the miner was totally disabled due to pnuemoconiosis or that his or her death was due to pneumoconiosis. In any case, other than that involving a claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981, in which there is other evidence that a miner has a pulmonary or respiratory impairment, the Secretary shall accept a board certified or board eligible radiologist's interpretation of a chest roentgenogram which is of a quality sufficient to demonstrate the presence of pneumoconiosis submitted in support of a claim for benefits under this title if such roentgenogram has been taken by a radiologist or qualified technician, except where the Secretary has reason to believe that the claim has been fraudulently represented. In order to insure that any such roentgenogram is of adequate quality to demonstrate the presence of pneumoconiosis, and in order to provide for uniform quality in the roentgenograms, the Secretary of Labor may, by regulation, establish specific requirements for the techniques used to take roentgenograms of the chest. Unless the Secretary has good cause to believe that an autopsy report is not accurate, or that the condition of the miner is being fraudulently misrepresented, the Secretary shall accept such autopsy report concerning the presence of pneumoconiosis and the stage of advancement of pneumoconiosis. Claimants under this part shall be reimbursed for reasonable medical expenses incurred by them in establishing their claims. For purposes of determining total disability under this part, the provisions of subsections (a), (b), (c), (d), and (g) of section 221 of such Act shall be applicable. The provisions of sections 204, 205(a), (b), (d), (e), (g), (h), (j), (k), (l), and (n), 206, 207, and 208 of the Social Security Act shall be applicable under this part with respect to a miner, widow, child, parent, brother, sister, or dependent, as if benefits under this part were benefits under title II of such Act. Each miner who files a claim for benefits under this title shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.

(c) No claim for benefits under this section shall be considered unless the claimant has also filed a claim under the applicable State workmen's compensation law prior to or at the same time his claim was filed for benefits under this section; except that the foregoing provisions of this paragraph shall not apply in any case in which the filing of a claim under such law would clearly be futile because the period within which such a claim may be filed thereunder has expired or because pneumoconiosis is not compensable under such law, or in any other situation in which, in the opinion of the Secretary, the filing of a claim would clearly be futile.

(d) No miner who is engaged in coal mine employment shall (except as provided in section 411(c)(3)) be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits pursuant to a claim filed while such miner was engaged in coal mine employment shall be entitled to such benefits if his or her employment terminates within one year after the date such determination becomes final.

SEC. 414. [30 U.S.C. 924] (a)(1) No claim for benefits under this part on account of total disability of a miner shall be considered unless it is filed on or before December 31, 1973, or, in the case of a claimant who is a widow, within six months after the death of her husband or by December 31, 1973, whichever is the later.

(2) In the case of a claim by a child this paragraph shall apply, notwithstanding any other provision of this part.

(A) If such claim is filed within six months following the month in which this paragraph is enacted[8], and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from December 30, 1969, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from December 30, 1969, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(B) If such claim is filed after six months following the month in which this paragraph is enacted, and if entitlement to benefits is established pursuant to such claim, such entitlement shall be effective retroactively from a date twelve months preceding the date such claim is filed, or from the date such child would have been first eligible for such benefit payments had section 412(a)(3) been applicable since December 30, 1969, whichever is the lesser period. If on the date such claim is filed the claimant is not eligible for benefit payments, but was eligible at any period of time during the period from a date twelve months preceding the date such claim is filed, to the date such claim is filed, entitlement shall be effective for the duration of eligibility during such period.

(C) No claim for benefits under this part, in the case of a claimant who is a child, shall be considered unless it is filed within six months after the death of his father or mother (whichever last occurred) or by December 31, 1973, whichever is the later.

(D) Any benefit under subparagraph (A) or (B) for a month prior to the month in which a claim is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such claim, the Secretary has certified for payment for such prior month.

(3) No claim for benefits under this part, in the case of a claimant who is a parent, brother, or sister shall be considered unless it is filed within six months after the death of the miner or by December 31, 1973, whichever is the later.

(b) No benefits shall be paid under this part after December 31, 1973, if the claim therefor was filed after June 30, 1973.

(c) No benefits under this part shall be payable for any period prior to the date a claim therefor is filed.

(d) No benefits shall be paid under this part to the residents of any State which, after the date of enactment of this Act, reduces the benefits payable to persons eligible to receive benefits under this part, under its State laws which are applicable to its general work force with regard to workmen's compensation, unemployment compensation, or disability insurance.

(e) No benefits shall be payable to a widow, child, parent, brother, or sister under this part on account of the death of a miner unless (1) benefits under this part were being paid to such miner with respect to disability due to pneumoconiosis prior to his death, (2) the death of such miner occurred prior to January 1, 1974, or (3) any such individual is entitled to benefits under paragraph (5) of section 411(c).

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SEC. 415. [30 U.S.C. 925] (a) Notwithstanding any other provision in this title, for the purpose of assuring the uninterrupted receipt of benefits by claimants at such time as responsibility for administration of the benefits program is assumed by either a State workmen's compensation agency or the Secretary of Labor, any claim for benefits under this part filed during the period from July 1, 1973[9] to December 31, 1973, shall be considered and determined in accordance with the procedures of this section. With respect to any such claim—

(1) Such claim shall be determined and, where appropriate under this part or section 9501(d) of the Internal Revenue Code of 1954, benefits shall be paid with respect to such claim by the Secretary of Labor.

(2) The manner and place of filing such claim shall be in accordance with regulations issued jointly by the Secretary of Health, Education, and Welfare and the Secretary of Labor, which regulations shall provide, among other things, that such claims may be filed in district offices of the Social Security Administration

[8] May 19, 1972 [P.L. 92-303; 86 Stat. 152].
[9] As in original. Should have a comma after "1973".

and thereafter transferred to the jurisdiction of the Department of Labor for further consideration.

(3) The Secretary of Labor shall promptly notify any operator who he believes, on the basis of information contained in the claim, or any other information available to him, may be liable to pay benefits to the claimant under part C of this title for any month after December 31, 1973.

(4) In determining such claims, the Secretary of Labor shall, to the extent appropriate, follow the procedures described in section 19(b), (c), and (d) of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended.

(5) Any operator who has been notified of the pendency of a claim under paragraph 4[10] of this subsection shall be bound by the determination of the Secretary of Labor on such claim as if the claim had been filed pursuant to part C of this title and section 422 thereof had been applicable to such operator. Nothing in this paragraph shall require any operator to pay any benefits for any month prior to January 1, 1974.

(b) The Secretary of Labor, after consultation with the Secretary of Health, Education, and Welfare, may issue such regulations as are necessary or appropriate to carry out the purpose of this section.

Part C—Claims for Benefits After December 31, 1973

SEC. 421. [30 U.S.C. 931] (a) On and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their surviving widows, children, parents, brothers, or sisters, as the case may be, are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, and in any case in which benefits based upon eligibility under paragraph (5) of section 411(c) are involved.[11] they shall be entitled to claim benefits under this part.

(b)(1) For purposes of this section, a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws found by the Secretary to provide such adequate coverage during such period. The Secretary shall, no later than October 1, 1972, publish in the Federal Register a list of State workmen's compensation laws which provide adequate coverage for pneumoconiosis and shall revise and republish in the Federal Register such list from time to time, as may be appropriate to reflect changes in such State laws due to legislation or judicial or administrative interpretation.

(2) The Secretary shall include a State workmen's compensation law on such list during any period only if he finds that during such period under such law—

(A) benefits must be paid for total disability or death of a miner due to pneumoconiosis, except that (i) such law shall not be required to provide such benefits where the miner's last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section; and (ii) each operator of a coal mine shall secure the payment of benefits pursuant to section 423 with respect to any miner whose last employment in a coal mine terminated before the Secretary's approval of the State law pursuant to this section;

(B) the amount of such cash benefits is substantially equivalent to or greater than the amount of benefits prescribed by section 412(a) of this title;

(C) the standards for determining death or total disability due to pneumoconiosis are substantially equivalent to section 402(f) of this title and to those standards established under this part, and by the regulations of the Secretary promulgated under this part;

(D) any claim for benefits on account of total disability of a miner due to pneumoconiosis is deemed to be timely filed if such claim is filed within three years after a medical determination of total disability due to pneumoconiosis;

(E) there are in effect provisions with respect to prior and successor operators which are substantially equivalent to the provisions contained in section 422(i) of this part; and

(F) there are applicable such other provisions, regulations or interpretations, which are consistent with the provisions contained in Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, which are applicable under section 422(a), but are not inconsistent with any of the criteria set forth in subparagraphs (A) through (E) of this paragraph, as the Secretary, in accordance with regulations promulgated by him, determines to be necessary or appropriate to assure adequate compensation for total disability or death due to pneumoconiosis.

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[10] As in original. Should be "(4)".
[11] As in original. Period should be deleted.

The action of the Secretary in including or failing to include any State workmen's compensation law on such list shall be subject to judicial review exclusively in the United States court of appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia.

(c) Final regulations required for implementation of any amendments to this part shall be promulgated and published in the Federal Register at the earliest practicable date after the date of enactment of such amendments, and in no event later than the end of the sixth month following the month in which such amendments are enacted.

SEC. 422. [30 U.S.C. 932] (a) Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during any period after December 31, 1973, in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) of this part, the provisions of Public Law 803, 69th Congress (44 Stat. 1424, approved March 4, 1927), as amended, and as it may be amended from time to time (other than the provisions contained in sections 1, 2, 3, 4, 8, 9, 10, 12, 13, 29, 30, 31, 32, 33, 37, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, and 51 thereof), shall (except as otherwise provided in this subsection or by regulations of the Secretary and except that references in such Act to the employer shall be considered to refer to the trustees of the fund, as the Secretary considers appropriate and as is consistent with the provisions of section 9501(d) of the Internal Revenue Code of 1954), be applicable to each operator of a coal mine in such State with respect to death or total disability due to pneumoconiosis arising out of employment in such mine, or with respect to entitlements established in paragraph (5) of section 411(c). In administering this part, the Secretary is authorized to prescribe in the Federal Register such additional provisions, not inconsistent with those specifically excluded by this subsection, as he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.

(b) During any such period each such operator shall be liable for and shall secure the payment of benefits, as provided in this section and section 423 of this part. An employer, other than an operator of a coal mine, shall not be required to secure the payment of such benefits with respect to any employee of such employer to the extent such employee is engaged in the transportation of coal or in coal mine construction. Upon determination by the Secretary of the eligibility of the employee, the Secretary may require such employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.

(c) Benefits shall be paid during such period by each such operator under this section to the categories of persons entitled to benefits under section 412(a) of this title in accordance with the regulations of the Secretary applicable under this section: *Provided*, That, except as provided in subsection (i) of this section, no benefit shall be payable by any operator on account of death or total disability due to pneumoconiosis (1) which did not arise, at least in part, out of employment in a mine during a period after December 31, 1969, when it was operated by such operator; or (2) which was the subject of a claim denied before March 1, 1978, and which is or has been approved in accordance with the provisions of section 435.

(d) Benefits payable under this section shall be paid on a monthly basis and, except as otherwise provided in this section, such payments shall be equal to the amounts specified in section 412(a) of this title. If payment is not made within the time required, interest shall accrue to such amounts at the rates set forth in section 424(b)(5) of this title for interest owed to the fund. With respect to payments withheld pending final adjudication of liability, in the case of claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981, such interest shall commence to accumulate 30 days after the date of the determination that such an award should be made.

(e) No payment of benefits shall be required under this section:

(1) except pursuant to a claim filed therefor in such manner, in such form, and containing such information, as the Secretary shall by regulation prescribe; or

(2) for any period prior to January 1, 1974.

(f) Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later—

(1) a medical determination of total disability due to pneumoconiosis; or

(2) the date of the enactment of the Black Lung Benefits Reform Act of 1977.

(g) The amount of benefits payable under this section shall be reduced, on a monthly or other appropriate basis, by the amount of any compensation received under or pursuant to any Federal or State workmen's compensation law because of death or disability due to pneumoconiosis. In addition, the amount of benefits payable under this section with respect to any claim filed on or after the effective date of the Black Lung Benefits Amendments of 1981 shall be reduced, on a monthly or other appropriate basis, by the amount by which such benefits would be reduced on account

of excess earnings of such miner under section 203(b) through (l) of the Social Security Act if the amount paid were a benefit payable under section 202 of such Act.

(h) The Secretary of Labor shall by regulation establish standards, which may include appropriate presumptions, for determining whether pneumoconiosis arose out of employment in a particular coal mine or mines. The Secretary may also, by regulation, establish standards for apportioning liability for benefits under this subsection among more than one operator, where such apportionment is appropriate.

(i)(1) During any period in which this section is applicable to the operator of a coal mine who on or after January 1, 1970, acquired such mine or substantially all the assets thereof, from a person (hereinafter in this subsection referred to as a "prior operator") who was an operator of such mine, or owner of such assets on or after January 1, 1970, such operator shall be liable for and shall, in accordance with section 423, secure the payment of all benefits which would have been payable by the prior operator under this section with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be an operator of a coal mine.

(2) Nothing in this subsection shall relieve any prior operator of any liability under this section.

(3)(A) For purposes of paragraph (1) of this subsection, the provisions of this paragraph shall apply to corporate reorganizations, liquidations, and such other transactions as are specified in this paragraph.

(B) If an operator ceases to exist by reason of a reorganization or other transaction or series of transactions which involves a change in identity, form, or place of business or organization, however effected, the successor operator or other corporate or business entity resulting from such reorganization or other change shall be treated as the operator to whom this section applies.

(C) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation, the parent or successor corporation shall be treated as the operator to whom this section applies.

(D) If an operator ceases to exist by reason of a sale of substantially all his or her assets, or as the result of a merger, consolidation, or division, the successor operator, corporation, or other business entity shall be treated as the operator to whom this section applies.

(4) In any case in which there is a determination under section 9501(d) of the Internal Revenue Code of 1954 that no operator is liable for the payment of benefits to a claimant, nothing in this subsection may be construed to require the payment of benefits to a claimant by or on behalf of any operator.

(j) Notwithstanding the provisions of this section, section 9501 of the Internal Revenue Code of 1954 shall govern the payment of benefits in cases—

(1) described in section 9501(d)(1) of the Internal Revenue Code of 1954;

(2) in which the miner's last coal mine employment was before January 1, 1970; or

(3) in which there was a claim denied before March 1, 1978, and such claim is or has been approved in accordance with the provisions of section 435.

(k) The Secretary shall be a party in any proceeding relative to a claim for benefits under this part.

(l) In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under this title at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, except with respect to a claim filed under this part on or after the effective date of the Black Lung Benefits Amendments of 1981,[12].

SEC. 423. [30 U.S.C. 933] (a) During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 421(b) each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 422 by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

(1) a provision to pay benefits required under section 422, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;

(2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and

[12]As in original. Comma should be deleted.

(3) such other provisions as the Secretary, by regulation, may require.

(c) No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection[12] shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d)(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than $1,000 for each day during which such failure occurs. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this title in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this title, and with intent to avoid the payment of benefits under this title to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

SEC. 424. [30 U.S.C. 934] (a) For purposes of this section, the term "fund" has the meaning set forth in section 402(h).

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 422, and

(B) the Secretary determines, under the provisions of sections 422 and 423, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No operator or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 422 or section 423. In a case where no operator responsibility is assigned pursuant to sections 422 and 423, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. That section shall be applied for such purposes—

(i) by substituting "lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "lien imposed by section 6321"; "operator liability lien" for "tax lien"; "operator" for "taxpayer"; "lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977" for "assessment of the tax"; "payment of the liability is made to the Black Lung Disability Trust Fund" for "satisfaction of a levy pursuant to section 6332(b)"; and "satisfaction of operator liability" for "collection of any tax under this title" each place such terms appear; and

(ii) by treating all references to the "Secretary" as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to

[12] As in original. Should be "section".

the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191)[14].

(C) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of the Internal Revenue Code of 1954.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of the Internal Revenue Code of 1954 which is in effect for such period.

SEC. 425. [30 U.S.C. 935] With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 422, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

SEC. 426. [30 U.S.C. 936] (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to issue such regulations as each deems appropriate to carry out the provisions of this title. Such regulations shall be issued in conformity with section 553 of title 5 of the United States Code, notwithstanding subsection (a) thereof.

(b) Within 120 days following the convening of each session of Congress the Secretary of Health, Education, and Welfare shall submit to the Congress an annual report upon the subject matter of part B of this title, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of part C of this title.

(c) Nothing in this title shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this title and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this title shall not thereby be construed or held to be in conflict with the provisions of this title.

SEC. 427. [30 U.S.C. 937] (a) The Secretary of Health, Education, and Welfare is authorized to enter into contracts with, and make grants to, public and private agencies and organizations and individuals for the construction, purchase, and operation of fixed-site and mobile clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in active and inactive coal miners. The Secretary shall coordinate the making of such contracts and grants with the Appalachian Regional Commission.

(b) The Secretary of Health, Education, and Welfare shall initiate research within the National Institute for Occupational Safety and Health, and is authorized to make research grants to public and private agencies and organizations and individuals for the purpose of devising simple and effective tests to measure, detect, and treat respiratory and pulmonary impairments in active and inactive coal miners. Any grant made pursuant to this subsection shall be conditioned upon all information, uses, products, processes, patents, and other developments resulting from such research being available to the general public, except to the extent of such exceptions and

[14] P.L. 97-258, §5(b), repealed §3466 of the Revised Statutes. See, instead, 31 U.S.C. 3713.

limitations as the Secretary of Health, Education, and Welfare may deem necessary in the public interest.[15]

(c) There is hereby authorized to be appropriated for the purpose of subsection (a) of this section $10,000,000 for each fiscal year. There are hereby authorized to be appropriated for the purposes of subsection (b) of this section such sums as are necessary.

SEC. 428. [30 U.S.C. 938] (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis. No person shall cause or attempt to cause an operator to violate this section. For the purposes of this subsection the term "miner" shall not include any person who has been found to be totally disabled.

(b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Each administrative law judge presiding under this section and under the provisions of titles I, II and III of this Act shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein.

(c) Whenever an order is issued under this subsection granting relief to a miner at the request of such miner, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by such miner for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

SEC. 429. [30 U.S.C. 939] There is authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out his responsibilities under this title. Such sums shall remain available until expended.

SEC. 430. [30 U.S.C. 940] The amendments made by the Black Lung Benefits Act of 1972,,[16] the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Amendments of 1981 to part B of this title shall, to the extent appropriate, also apply to part C of this title.

SEC. 431. [30 U.S.C. 941] Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this title shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

SEC. 432. [30 U.S.C. 942] (a) The Secretary may by regulation require employers to file reports concerning miners who may be or are entitled to benefits under this part, including the date of commencement and cessation of benefits and the amount of such benefits. Any such report shall not be evidence of any fact stated therein in any proceeding relating to death or total disability due to pneumoconiosis of any miner to which such report relates.

(b) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty of not more than $500 for each such failure or refusal.

SEC. 433. [30 U.S.C. 943] (a) The Secretary is authorized to establish and carry out a black lung insurance program which will enable operators of coal mines to purchase insurance covering their obligations under section 422.

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[15] 35 U.S.C. §§200-211 [with respect to patents and trademarks] take precedence over this subsection 427(b), in accordance with P.L. 96-517, §6(a), effective July 1, 1981.

[16] As in original. One comma should be deleted.

(b) The Secretary may exercise his or her authority under this section only if, and to the extent that, insurance coverage is not otherwise available, at reasonable cost, to operators of coal mines.

(c)(1) The Secretary may enter into agreements with operators of coal mines who may be liable for the payment of benefits under section 422, under which the Black Lung Compensation Insurance Fund established under subsection (a) (hereinafter in this section referred to as the "insurance fund") shall assume all or part of the liability of such operator in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund. During any period in which such agreement is in effect the operator shall be deemed in compliance with the requirements of section 423 with respect to the risks covered by such agreement.

(2) The Secretary may also enter into reinsurance agreements with one or more insurers or pools of insurers under which, in return for the payment of premiums to the insurance fund, and on such terms and conditions as will fully protect the financial solvency of the insurance fund, the insurance fund shall provide reinsurance coverage for benefits required to be paid under section 422.

(d) The Secretary may by regulation provide for general terms and conditions of insurability as applicable to operators of coal mines or insurers eligible for insurance or reinsurance under this section, including—

(1) the types, classes, and locations of operators or facilities which shall be eligible for such insurance or reinsurance;

(2) the classification, limitation, and rejection of any operator or facility which may be advisable;

(3) appropriate premiums for different classifications of operators or facilities;

(4) appropriate loss deductibles;

(5) experience rating; and

(6) any other terms and conditions relating to insurance or reinsurance coverage or exclusion which may be appropriate to carry out the purposes of this section.

(e) The Secretary may undertake and carry out such studies and investigations, and receive or exchange such information, as may be necessary to formulate a premium schedule which will enable the insurance and reinsurance authorized by this section to be provided on a basis which is (1) in accordance with accepted actuarial principles; and (2) fair and equitable.

(f)(1) On the basis of estimates made by the Secretary in formulating a premium schedule under subsection (e), and such other information as may be available, the Secretary shall from time to time prescribe by regulation the chargeable premium rates for types and classes of insurers, operators of coal mines, and facilities for which insurance or reinsurance coverage shall be available under this section and the terms and conditions under which, and the area within which, such insurance or reinsurance shall be available and such rates shall apply.

(2) Such premium rates shall be (A) based on a consideration of the risks involved, taking into account differences, if any, in risks based on location, type of operations, facilities, type of coal, experience, and any other matter which may be considered under accepted actuarial principles; and (B) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses.

(3) All premiums received by the Secretary shall be paid into the insurance fund.

(g)(1) The Secretary may establish in the Department of Labor a Black Lung Compensation Insurance Fund which shall be available, without fiscal year limitation—

(A) to pay claims of miners for benefits covered by insurance or reinsurance issued under this section;

(B) to pay the administrative expenses of carrying out the black lung compensation insurance program under this section; and

(C) to repay to the Secretary of the Treasury such sums as may be borrowed in accordance with the authority provided in subsection (i).

(2) The insurance fund shall be credited with—

(A) premiums, fees, or other charges which may be collected in connection with insurance or reinsurance coverage provided under this section;

(B) such amounts as may be advanced to the insurance fund from appropriations in order to maintain the insurance fund in an operative condition adequate to meet its liabilities; and

(C) income which may be earned on investments of the insurance fund pursuant to paragraph (3).

(3) If, after all outstanding current obligations of the insurance fund have been liquidated and any outstanding amounts which may have been advanced to the insurance fund from appropriations authorized under subsection (i) have been credited to the appropriation from which advanced, the Secretary determines that the moneys

of the insurance fund are in excess of current needs, he or she may request the investment of such amounts as he or she deems advisable by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the insurance fund and bearing interest at prevailing market rates.

(h) The Secretary shall report to the Congress not later than the first day of April of each year on the financial condition of the insurance fund and the results of the operations of the insurance fund during the preceding fiscal year and on its expected condition and operations during the fiscal year in which the report is made.

(i) There are authorized to be appropriated to the insurance fund, as repayable advances, such sums as may be necessary to meet obligations incurred under subsection (g). All such sums shall remain available without fiscal year limitation. Advances made pursuant to this subsection shall be repaid, with interest, to the general fund of the Treasury when the Secretary determines that moneys are available in the insurance fund for such repayments. Interest on such advances shall be computed in the same manner as provided in subsection (b)(2) of section 3 of the Black Lung Benefits Revenue Act of 1977.

SEC. 434. [30 U.S.C. 944] Any individual whose claim for benefits under this title is denied shall receive from the Secretary a written statement of the reasons for denial of such claim, and a summary of the administrative hearing record or, upon good cause shown, a copy of any transcript thereof.

SEC. 435. (a) [30 U.S.C. 945] (1) The Secretary of Health, Education, and Welfare shall promptly notify each claimant who has filed a claim for benefits under part B of this title and whose claim is either pending on the effective date of this section or has been denied on or before that effective date, that, upon the request of the claimant, the claim shall be either—

(A) reviewed by the Secretary of Health, Education, and Welfare under paragraph (2) for a determination based on the evidence on file, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977; or

(B) referred directly by the Secretay of Health, Education, and Welfare to the Secretary of Labor for a determination under paragraph (3), with an opportunity for the claimant to present additional medical or other evidence in accordance with that paragraph, taking into account the amendments made by the Black Lung Benefits Reform Act of 1977.

(2)(A) The Secretary of Health, Education, and Welfare shall approve forthwith each claim for which review is requested under paragraph (1)(A) if, based upon the evidence on file, the provisions of part B of this title, as amended by the Black Lung Benefits Reform Act of 1977, require such approval. The Secretary of Health, Education, and Welfare shall certify such approval to the Secretary of Labor and such approval shall be binding upon the Secretary of Labor as an initial determination of eligibility. Upon receipt of that certification, the Secretary of Labor shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(B)(i) The Secretary of Health, Education, and Welfare shall refer to the Secretary of Labor any claim not approved under subparagraph (A) for a determination under paragraph (3), and shall notify the claimant of that referral to the Secretary of Labor for such a determination.

(ii) The Secretary of Health, Education, and Welfare shall notify each claimant whose claim has been approved under subparagraph (A) that, if the claimant disputes the scope or terms of the award, such dispute shall be referred to the Secretary of Labor for a determination under paragraph (3).

(C) Upon the completion of the review of any claim by the Secretary of Health, Education, and Welfare under this paragraph, the responsibility for further action with respect to such claim shall be transferred to the Secretary of Labor. The Secretary of Labor shall consider each such claim in accordance with paragraph (3).

(3)(A) Except as provided in this section, the Secretary of Labor shall treat each claim referred by the Secretary of Health, Education, and Welfare under paragraph (1)(B) or (2)(B) as if it were a claim filed under this part. The provisions of subsection (b) shall apply to any determination of the Secretary with respect to any such claim referred to the Secretary.

(B) The Secretary of Health, Education, and Welfare shall promptly furnish to the Secretary of Labor all pertinent information in the possession of the Department of Health, Education, and Welfare relating to claims referred to the Secretary of Labor under this subsection.

(4) For the purposes of any determination by the Secretary of Labor under paragraph (3), the date of the request under paragraph (1) shall be considered the date of filing of the claim.

(b)(1) The Secretary of Labor shall review each claim which has been denied under this part (or under section 415) on or before the effective date of this subsection, and

each claim which is pending under this part (or under section 415) on such effective date, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977. The Secretary shall approve any such claim forthwith if the provisions of this part, as so amended, require that approval, and the Secretary shall immediately make or otherwise provide for the payment of the claim in accordance with this part.

(2)(A) The Secretary, in carrying out the review of any claim under paragraph (1) and in making any determination under subsection (a)(3), shall not require any additional medical or other evidence to be submitted if the evidence on file is sufficient for approval of the claim, taking into account the amendments made to this part by the Black Lung Benefits Reform Act of 1977.

(B) If the evidence on file is not sufficient for approval of the claim, the Secretary shall provide an opportunity for the claimant to present additional medical or other evidence to substantiate his or her claim and shall notify each claimant of that opportunity.

(c) Any individual whose claim is approved pursuant to this section shall be awarded benefits on a retroactive basis for a period which begins no earlier than January 1, 1974.

[*Internal Reference.*—Social Security Administration Regulations No. 10 (20 CFR 410.101 - 410.707) relate to the provisions of Part B of title IV of P.L. 91-173.]

P.L. 91-230, Approved April 13, 1970 (84 Stat. 121)
[Education Assistance Programs]

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TITLE VI—EDUCATION OF THE HANDICAPPED

PART A—GENERAL PROVISIONS

SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. [20 U.S.C. 1400] (a) This title may be cited as the "Education of the Handicapped Act".

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children

and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

DEFINITIONS

SEC. 602. [20 U.S.C. 1401] (a) As used in this title—

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(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.[1]

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.[2]

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PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

SEC. 613. [20 U.S.C. 1413]

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(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for handicapped children within the State.[3]

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PART H—HANDICAPPED INFANTS AND TODDLERS

SEC. 671. [20 U.S.C. 1471]

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(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance their[4] capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to handicapped infants, toddlers, and their families.

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SEC. 681. [20 U.S.C. 1481]

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(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.

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[1] P.L. 100-630, §101(a)(1), moved this paragraph 2 ems to the right, so that the left margin is indented 4 ems.
[2] See footnote 1.
[3] P.L. 100-630, §102(c)(14), struck out "; and" and substituted a period.
[4] P.L. 100-630, §108(a)(2), struck out "its" and substituted "their".

[*Internal References.*—Social Security Act §§1903(c) and 1915(c) cite the Education of the Handicapped Act.]

P.L. 91-373, Approved August 10, 1970 (84 Stat. 695)
Employment Security Amendments of 1970

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TITLE II—FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SHORT TITLE

SEC. 201. [26 U.S.C. 3304 note] This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970".

PAYMENT OF EXTENDED COMPENSATION

State Law Requirements

SEC. 202. [26 U.S.C. 3304 note] (a)(1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide that payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—

(i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c[1]) or fails to apply for any suitable work to which he was referred by the State agency; or

(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (i) or (ii) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(i) begins with the week following the week in which such failure occurs, and

(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the

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[1] As in original. Should be "(C)".

individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(c)[2] for his benefit year.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

(D) Extended compensation shall not be denied under clause (i) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

(i) if the gross average weekly remuneration payable to such indiivdual for the position does not exceed the sum of—

(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year, plus

(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

(iv) if the position pays wages less than the higher of—

(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) any applicable State or local minimum wage.

(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide for referring applicants for benefits under this Act to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.[3]

(4) No provision of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(5) Notwithstanding the provisions of paragraph (2), an individual shall not be eligible for extended compensation unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1 1/2 times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest (or one such quarter if his wages were the same for more than one such quarter). The State shall by law provide which one of the foregoing methods of measuring employment and earnings shall be used in that State.

(6) No payment shall be made under this Act to any State in respect of any extended compensation or sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3), (4), and (5), extended compensation would not have been payable to such individual for such week.

Individual's Compensation Accounts

(b)(1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him during such benefit year under such law,

[2] As in original. Should be "(b)(1)(C)".
[3] See P.L. 96-499, §1025, with respect to withholding certification of State unemployment laws, in Vol. II, p. 729.

(B) thirteen times his average weekly benefit amount, or

(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect

(c)(1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

(B) an extended benefit period is not in effect for such week in such State.

(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection.

EXTENDED BENEFIT PERIOD

Beginning and Ending

SEC. 203. [26 U.S.C. 3304 note] (a) For purposes of this title, in the case of any State, an extended benefit period—

(1) shall begin with the third week after the first week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is a State "off" indicator.

Special Rules

(b)(1) In the case of any State—

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

Eligibility Period

(c) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

State "On" and "Off" Indicators

(d) For purposes of this section—

(1) There is a State "on" indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 5 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure "5" contained in subparagraph (B) thereof were "6"; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

Rate of Insured Unemployment; Covered Employment

(e)(1) For purposes of subsection (d), the term "rate of insured unemployment" means the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

(B) the average monthly covered employment for the specified period.

(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

PAYMENTS TO STATES

Amount Payable

SEC. 204. [26 U.S.C. 3304 note] (a)(1) There shall be paid to each State an amount equal to one-half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

(2) No payment shall be made to any State under this subsection in respect of compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) of the Trade Act of 1974, or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount.

(3) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1954 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

Sharable Extended Compensation

(b) For purposes of subsection (a)(1)(A), extended compensation paid to an individual for weeks of unemployment in such individual's eligibility period is sharable extended compensation to the extent that the aggregate extended compensation paid to such individual with respect to any benefit year does not exceed the smallest of the amounts referred to in subparagraphs (A), (B), and (C) of section 202(b)(1).

Sharable Regular Compensation

(c) For purposes of subsection (a)(1)(B), regular compensation paid to an individual for a week of unemployment is sharable regular compensation—

(1) if such week is in such individual's eligibility period (determined under section 203(c)), and

(2) to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to him with respect to prior weeks of unemployment in the benefit year, exceeds twenty-six times (and does not exceed thirty-nine times) the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to such individual under the State law in such benefit year.

Payment on Calendar Month Basis

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Certification

(e) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

DEFINITIONS

SEC. 205. [26 U.S.C. 3304 note] For purposes of this title—

(1) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(2) The term "regular compensation" means compensation payable to an individual under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

(3) The term "extended compensation" means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

(4) The term "additional compensation" means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(5) The term "benefit year" means the benefit year as defined in the applicable State law.

(6) The term "base period" means the base period as determined under applicable State law for the benefit year.

(7) The term "Secretary" means the Secretary of Labor of the United States.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(9) The term "State agency" means the agency of the State which administers its State law.

(10) The term "State law" means the unemployment compensation law of the State, approved by the Secretary under section 3304 of the Internal Revenue Code of 1954.

(11) The term "week" means a week as defined in the applicable State law.

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EFFECTIVE DATES

SEC. 207. [26 U.S.C. 3304 note] (a) Except as provided in subsection (b)—

(1) in applying section 203, no extended benefit period may begin with a week beginning before January 1, 1972; and

(2) section 204 shall apply only with respect to weeks of unemployment beginning after December 31, 1971.

(b)(1) In the case of a State law approved under section 3304(a)(11) of the Internal Revenue Code of 1954, such State law may also provide that an extended benefit period may begin with a week established pursuant to such law which begins earlier than January 1, 1972, but not earlier than 60 days after the date of the enactment of this Act.

(2) For purposes of paragraph (1) with respect to weeks beginning before January 1, 1972, the extended benefit period for the State shall be determined under section 203(a) solely by reference to the State "on" indicator and the State "off" indicator.

(3) In the case of a State law containing a provision described in paragraph (1), section 204 shall also apply with respect to weeks of unemployment in extended benefit periods determined pursuant to paragraph (1).

(c) Section 3304(a)(11) of the Internal Revenue Code of 1954 (as added by section 206) shall not be a requirement for the State law of any State—

(1) in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1971, with respect to any week of unemployment which begins prior to July 1, 1972; or

(2) in the case of any other State, with respect to any week of unemployment which begins prior to January 1, 1972.

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[*Internal References.*—Social Security Act §§905(c) and (d) and 1202(b) cite the Federal-State Extended Unemployment Compensation Act of 1970.]

P.L. 91-513, Approved October 27, 1970 (84 Stat. 1236)
Comprehensive Drug Abuse Prevention and Control Act of 1970

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TITLE II—CONTROL AND ENFORCEMENT

SHORT TITLE

SEC. 100. [21 U.S.C. 801 note] This title may be cited as the "Controlled Substances Act".

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DENIAL REVOCATION, OR SUSPENSION OF REGISTRATION

SEC. 304. [21 U.S.C. 824] (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this title or title III;

(2) has been convicted of a felony under this title or title III or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;[1]

(4) has committed such acts as would render his registration under section 303 inconsistent with the public interest as determined under such section; or[2]

(5) has been excluded (or directed to be excluded) from participation in a program pursuant to section 1128(a) of the Social Security Act.[3]

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[1] P.L. 100-93, §8(j)(1), struck out "or".
[2] P.L. 100-93, §8(j)(2), struck out the period and substituted "; or".
[3] P.L. 100-93, §8(j)(3), added paragraph (5).

A registration pursuant to section 303(g) to dispense a narcotic drug for maintenance treatment or detoxification treatment may be suspended or revoked by the Attorney General upon a finding that the registrant has failed to comply with any standard referred to in section 303(g).

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[*Internal Reference.*—Social Security Act §1128(d) and (g) cites the Controlled Substances Act.]

P.L. 91-646, Approved January 2, 1971 (84 Stat. 1894)
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

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TITLE I—GENERAL PROVISIONS

SEC. 101. [42 U.S.C. 4601]

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(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual,[1] and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in section 101(7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 202(a) and (b) and 205 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.[2]

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[1] P.L. 100-17, §402(c), inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual,".
[2] P.L. 100-17, §402(d), amended paragraph (6) in its entirety.

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TITLE II—UNIFORM RELOCATION ASSISTANCE

DECLARATION OF FINDINGS AND POLICY[1]

SEC. 201. [42 U.S.C 4621] (a) The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that—

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964.

MOVING AND RELATED EXPENSES

SEC. 202. [42 U.S.C. 4622] (a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of[2]—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;[5]

(3) actual reasonable expenses in searching for a replacement business or farm; and[6]

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.[7]

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[1] P.L. 100-17, §404, amended §201 in its entirety.

[2] P.L. 100-17, §405(a)(1), struck out "the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for" and substituted "a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of".

[5] P.L. 100-17, §405(a)(2), struck out "and".

[6] P.L. 100-17, §405(a)(3), struck out the period and substituted "; and".

[7] P.L. 100-17, §405(a)(4), added paragraph (4).

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency[8].

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.[9]

(d)(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.[10]

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. [42 U.S.C. 4623] (a) (1) In addition to payments otherwise authorized by this title, the head of the displacing[11] agency shall make an additional payment not in excess of $22,500[12] to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

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[8]P.L. 100-17, §405(b), struck out "a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200" and substituted "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency".

[9]P.L. 100-17, §405(c), amended subsection (c) in its entirety.

[10]P.L. 100-17, §405(d), added subsection (d).

[11]P.L. 100-17, §406(1), struck out "Federal" and substituted "displacing".

[12]P.L. 100-17, §406(2), struck out "$15,000" and substituted "$22,500".

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.[13]

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.[14]

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.[15]

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS[16]

SEC. 204. [42 U.S.C. 4624] (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

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[13]P.L. 100-17, §406(3), struck out "Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment." and substituted "displacing agency, equals the reasonable cost of a comparable replacement dwelling.".

[14]P.L. 100-17, §406(4), amended subparagraph (B) in its entirety.

[15]P.L. 100-17, §406(5), amended paragraph (2) in its entirety.

[16]P.L. 100-17, §407, amended §204 in its entirety.

PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. [42 U.S.C. 4636] No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance)[17].

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[*Internal References.*—Social Security Act §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), and 1612(b) have footnotes referring to P.L. 91-646.]

P.L. 92-203, Approved December 18, 1971 (85 Stat. 688)
Alaska Native Claims Settlement Act

* * * * * * *

SEC. 2. [43 U.S.C. 1601] Congress finds and declares that—

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

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SEC. 3. [43 U.S.C. 1602] For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

* * * * * * *

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

* * * * * * *

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

* * * * * * *

SEC. 7. [43 U.S.C. 1606] (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at[1] this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel Area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

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[17] P.L. 100-17, §413, inserted "(except for any Federal law providing low-income housing assistance)".
[1] As in original. Probably should be "of".

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);
(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);
(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);
(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);
(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);
(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);
(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and
(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

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(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

(I) Natives born after December 18, 1971,

(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

(III) Natives who have attained the age of 65,

for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

(2) OTHER FORMS OF STOCK.—(A) A Regional Corporation may amend its articles of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, or

(ii) issuance of such shares shall permanently preclude the corporation from—

(I) conveying assets to a Settlement Trust, or

(II) issuing shares of stock without adequate consideration as required under the laws of the State.

(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

(I) dividend rights,

(II) voting rights, and

(III) liquidation preferences;

(ii) made subject to one or more of—

(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

(II) the restriction described in paragraph (1)(B)(iii); and

(iii) restricted in issuance to—

(I) Natives who have attained the age of sixty-five;

(II) other identifiable groups of Natives or identifiable groups of decendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family;

(III) Settlement Trust; or

(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

(D) During any period in which alienability restrictions are in effect, no stock whose issuance is authorized by subparagraph (A) shall be—

(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

(i) the maximum number of shares of any class or series of stock that may be issued, and

(ii) the maximum number of votes that may be held by such shares.

(B)(i) If the board of directors of a Regional Corporation intends to propose an amendment pursuant to paragraph (2) which would authorize the issuance of classes or series of stock that, singly or in combination, could cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purposes of electing directors, the shareholders of such corporation shall be expressly so informed.

(ii) Such information shall be transmitted to the shareholders in a separate disclosure statement or in another informational document in writing or in recorded sound form both in English and any Native language used by a shareholder of such corporation. Such statement or informational document shall be transmitted to the shareholders at least sixty days prior to the date on which such proposal is to be submitted for a vote.

(iii) If not later than thirty days after issuance of such disclosure statement or informational document the board of directors receives a prepared concise statement setting forth arguments in opposition to the proposed amendment together with a request for distribution thereof signed by the holders of at least 10 per centum of the outstanding shares of Settlement Common Stock, the board shall either distribute such statement to the shareholders or provide to the requesting shareholders a list of all shareholder's names and addresses so that the requesting shareholders may distribute such statement.

(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuant to paragraph (1)(B)(iv).

(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act.[3]

(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

(i) sold;

(ii) pledged;

(iii) subjected to a lien or judgment execution;

(iv) assigned in present or future;

(v) treated as an asset under—

(I) title 11 of the United States Code or any successor statute,

(II) any other insolvency or moratorium law, or

(III) other laws generally affecting creditors' rights; or

(vi) otherwise alienated.

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native—

(i) pursuant to a court decree of separation, divorce, or child support;

(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

(i) the corporation—

(I) amends its articles of incorporation to authorize such purchases, and

(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

(C) Settlement Common Stock of a Regional Corporation—

(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

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[3]P.L. 100-241, §4, amended subsection (g) in its entirety.

(3) REPLACEMENT COMMON STOCK.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

(I) a share of Replacement Common Stock that carries such right, or

(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.[3]

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SEC. 8 [43 U.S.C. 1607] * * *

(c) APPLICABILITY OF SECTION 7.—The provisions of subsections (g), (h), and (o) of section 7 shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.[4]

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RELATION TO OTHER PROGRAMS

SEC. 29 [43 U.S.C. 1626] (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964[5] (78 Stat. 703), as amended, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded.

(c) In determining the eligibility of a household, an individual Native, or a descendant of a Native (as defined in section 3(r)) to—

[3] P.L. 100-241, §5, amended subsection (h) in its entirety.
[4] P.L. 100-241, §6, amended subsection (c) in its entirety.
[5] P.L. 88-525.

(1) participate in the Food Stamp Program,
(2) receive aid, assistance, or benefits, based on need, under the Social Security Act, or
(3) receive financial assistance or benefits, based on need, under any other Federal program or federally-assisted program,

none of the following, received from a Native Corporation, shall be considered or taken into account as an asset or resource:

(A) cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;
(B) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);
(C) a partnership interest;
(D) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and
(E) an interest in a settlement trust,[6]

(d) Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans.[7]

(e)(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority business enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.

(2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—

(A) the total equity of the subsidiary corporation, joint venture, or partnership; and
(B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.

(3) No provision of this subsection shall—

(A) preclude a Federal agency or instrumentality from applying standards for determining minority ownership (or control) less restrictive than those described in paragraphs (1) and (2), or
(B) supersede any such less restrictive standards in existence on the date of enactment of the Alaska Native Claims Settlement Act Amendments of 1987.[8]

* * * * * * *

(g) For the purposes of implementation of the Civil Rights Act of 1964, a Native Corporation and corporations, partnerships, joint ventures, trusts, or affiliates in which the Native Corporation owns not less than 25 per centum of the equity shall be within the class defined in section 701(b) of Public Law 88-352 (78 Stat. 253), as amended, or successor statutes.[9]

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[*Internal References.*—Social Security Act §§428(c) and (i), and 1613(a) cite the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688).]

P.L. 92-318, Approved June 23, 1972 (86 Stat. 235)
Education Amendments of 1972

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TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

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[6]P.L. 100-241, §15, added this subsection.
[7]See footnote 6.
[8]See footnote 6.
[9]See footnote 6.

SEC. 901. [20 U.S.C. 1681] (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

FEDERAL ADMINISTRATIVE ENFORCEMENT

SEC. 902. [20 U.S.C. 1682] Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

JUDICIAL REVIEW

SEC. 903. [20 U.S.C. 1683] Any department or agency action taken pursuant to section 1002 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

SEC. 904. [20 U.S.C. 1684] No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

EFFECT ON OTHER LAWS

SEC. 905. [20 U.S.C. 1685] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

SEC. 907. [20 U.S.C. 1686] Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

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[*Internal Reference.*—Social Security Act §508(a) cites the Education Amendments of 1972.]

P.L. 92-336, Approved July 1, 1972 (86 Stat. 406)
[Public Debt Limit—Extension]

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SEC. 201.

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(h) * * *

(2) [42 U.S.C. 403 note] In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.

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[*Internal Reference.*—Social Security Act §1902(a) cites Public Law 92-336.]

P.L. 92-463, Approved October 6, 1972 (86 Stat. 770)
Federal Advisory Committee Act

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FINDINGS AND PURPOSES

SEC. 2. [5 U.S.C. App. §2] (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed:

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official agency, or officer involved.

DEFINITIONS

SEC. 3. [5 U.S.C. App. §3] For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. [5 U.S.C. App. §4] (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. [5 U.S.C. App. §5] (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. [5 U.S.C. App. §6] (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. [5 U.S.C. App. §7] (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission[1], shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

[1]Reorganization Plan No. 2 of 1978, §102, transferred the functions of the Civil Service Commission to the Director of the Office of Personnel Management.

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. [5 U.S.C. App. §8] (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. [5 U.S.C. App. §9] (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. [5 U.S.C. App. §10] (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairmen of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. [5 U.S.C. App. §11] (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. [5 U.S.C. App. §12] (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. [5 U.S.C. App. §13] Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. [5 U.S.C. App. §14] (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

SEC. 15. [5 U.S.C. App. §15] Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

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[*Internal References.*—Social Security Act §1886(e) cites the Federal Advisory Committee Act. The catchlines to SSAct §§706 and 1114 have footnotes referring to P.L. 92-463.]

P.L. 92-603, Approved October 30, 1972 (86 Stat. 1329)
Social Security Amendments of 1972

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT

SEC. 101. * * *

(f) [42 U.S.C. 415 note] Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act where applicable, to such difference.

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INCREASED WIDOW'S AND WIDOWER'S INSURANCE BENEFITS

SEC. 102. * * *

(g) [42 U.S.C. 402 note] (1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act as if the amendments made by this section had been in effect for the first month of such individual's entitlement to such benefits.

(2) For purposes of paragraph (1)—

(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

(B) any deductions under subsections (b) and (c) of section 203 of such Act, applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act (as amended by this Act).

(h) [42 U.S.C. 402 note] Where—

(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act for December 1972 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202, and

(2) one or more such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1973, and

(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1972 shall in no case be less after the application of this section and such section 203(a) than the amount it would have been without the application of this section.

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AGE-62 COMPUTATION POINT FOR MEN

SEC. 104. * * *

(j) * * *

(2) [42 U.S.C. 414 note] In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly benefits under title II of the Social Security Act for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

(3) [42 U.S.C. 414 note] (A) In the case of a man who attains or will attain age 62 in 1973, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "64".

(B) In the case of a man who attains or will attain age 62 in 1974, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "63".

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ACCEPTANCE OF MONEY GIFTS MADE UNCONDITIONALLY TO SOCIAL SECURITY

SEC. 132. * * *

(g) [42 U.S.C. 401 note] For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund,

or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act, shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.

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DEMONSTRATIONS AND REPORTS; PROSPECTIVE REIMBURSEMENT; EXTENDED CARE; INTERMEDIATE CARE AND HOMEMAKER SERVICES; AMBULATORY SURGICAL CENTERS; PHYSICIANS' ASSISTANTS; PERFORMANCE INCENTIVE CONTRACTS[1]

SEC. 222. (a) [42 U.S.C. 1395b-1 note] (1) The Secretary of Health, Education, and Welfare, directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act and under State plans approved under title XIX of such Act, including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

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[1] See P.L. 96-499, §903(c) with respect to a limitation on the number of demonstration projects.
See P.L. 99-509, "Omnibus Budget Reconciliation Act of 1986", §9307(b) with respect to the Massachusetts medicare repayment.
See P.L. 100-360, "Medicare Catastrophic Coverage Act of 1988", §222, with respect to adjustment of contracts with prepaid health plans; Vol. II, p. 891.

(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.

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PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

SEC. 226. * * *

(b) [42 U.S.C. 1395mm note] (1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act, any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act for individuals who are members of such organizations.

(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act, with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act.

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PAYMENT FOR DURABLE MEDICAL EQUIPMENT UNDER MEDICARE

SEC. 245. [42 U.S.C. 1395x note] (a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act.

(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.

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ADVANCES FROM OASI TRUST FUND FOR ADMINISTRATIVE EXPENSES

SEC. 305. * * *

(b) [42 U.S.C. 401 note] (1) Sums appropriated pursuant to section 1601 of the Social Security Act shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act, to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) on account of the costs of administration of title XVI of such Act (as added by section 301 of this Act).

(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a)[2] shall cease to be effective at the close of the fiscal year following such fiscal year.

(3) As used in this subsection, the term "Trust Funds" has the meaning given it in section 201(g)(1)(A) of the Social Security Act.

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LIMITATION ON FISCAL LIABILITY OF STATES FOR OPTIONAL STATE SUPPLEMENTATION[3]

SEC. 401. [42 U.S.C. 1382e note] (a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

(B) the benefits under title XVI of the Social Security Act (subject to the second sentence of this paragraph) (subject to the second sentence of this paragraph)[4], plus income not excluded under section 1612(b) of such Act in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977, and before July 1, 1979. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.[5]

(b) [42 U.S.C. 1382e note] (1) For purposes of subsection (a), the term "adjusted payment level under the appropriate approved plan of a State as in effect for January 1972" means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X,

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[2]P.L. 92-603, §305, was enacted and became effective October 30, 1972.

[3]See P.L. 93-233, §8(d), with respect to cash payments in lieu of food stamps to recipients of SSI benefits, in Vol. II, p. 643.

[4]As in original.

[5]As in original.

XIV, or XVI of the Social Security Act, as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plans.

(2) For purposes of paragraph (1), the term "payment level modification" with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act.

(3) For purposes of paragraph (1), the term "bonus value of food stamps in a State for January 1972" (with respect to an individual) means—

(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 for January 1972, reduced by

(B) the charge which such an individual would have paid for such coupon allotment,

if the income of such individual, for purposes of determining the charge it would have paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

(c) For purposes of this section, the term "non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act" means the difference between—

(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act, under section 1118 of such Act, and under section 9 of the Act of April 19, 1950, for such State with respect to such expenditures in such quarters.

(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.

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[*Internal References.*—Social Security Act §§202(e) and (f), 215(b), 1101(a), 1814(b), 1875(b), and 1886(c) cite the Social Security Amendments of 1972. Social Security Act §§201(g) and (i), 1616(d), and 1861(s) have footnotes referring to P.L. 92-603.]

P.L. 93-66, Approved July 9, 1973 (87 Stat. 152)
[Cost-of-Living Increase in Social Security Benefits]

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SEC. 203. * * *

(f) [42 U.S.C. 415 note] Effective June 1, 1974, the Secretary of Health, Education, and Welfare, shall prescribe and publish in the Federal Register such modifications and extensions in the table contained in section 215(a) of the Social Security Act (which shall be determined in the same manner as the revisions in such table provided for under section 215(i)(2)(D) of such Act) as may be necessary to reflect the amendments made by this section; and such modified and extended table shall be deemed to be the table appearing in such section 215(a).

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SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS

SEC. 211. [42 U.S.C. 1382 note] (a)(1) In determining (for purposes of title XVI of the Social Security Act, as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act, shall each be increased by $876 for each such essential person, and

(B) the income and resources of such individual shall (for purposes of such title XVI) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

(C) does not but would (except for the provisions of subparagraph (B)) meet—

(i) the criteria established with repect to income in section 1611(a) of such Act, or

(ii) the criteria established with respect to resources by such section 1611(a) (or, if applicable, by section 1611(g) of such Act).

(2) The provisions of section 1611(g) of the Social Security Act (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

(b) For purposes of this section, an individual shall be a "qualified individual" only if—

(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act, and

(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

(A) was living in the home of such individual, and

(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

(c) The term "essential person", when used in connection with any qualified individual, means a person who—

(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

(2) lives in the home of such individual,

(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act (as in effect after December 1973), and

(4) is not the eligible spouse (as that term is used in such title XVI) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SSI BENEFITS PROGRAM

SEC. 212. [42 U.S.C. 1382 note] (a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX, with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act, as enacted by section 301 of the Social Security Amendments of 1972[1]), and

[1] P.L. 92-603 (86 Stat. 1329), approved October 30, 1972.

(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act)

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

(C) the month in which such individual dies, or

(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act by reason of the provisions of section 1611(e)(1)(A), (2), or (3), 1611(f), or 1615(c) of such Act.

(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's "December 1973 income" (as determined under subparagraph (B)) exceeds the amount of such individual's "title XVI benefit plus other income" (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

(B) For purposes of subparagraph (A), an individual's "December 1973 income" means an amount equal to the aggregate of—

(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92-603, if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act, and (II) the level of which has been found by the Secretary pursuant to section 8 of Public Law 93-233 to have been specifically increased so as to include the bonus value of food stamps, and

(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

(C) For purposes of subparagraph (A), the amount of an individual's "title XVI benefit plus other income" for any month means an amount equal to the aggregate of—

(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act, and

(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act, such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act, and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.[2]

(4) Any State having an agreement with the Secretary under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act, or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).[2]

(b)(1) Any State having an agreement with the Secretary under subsection (a) may enter into an administration agreement with the Secretary whereby the Secretary will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

(2) Any such administration agreement between the Secretary and a State entered into under this subsection shall provide that the State will (A) certify to the Secretary the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act, together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Secretary with such additional data at such times as the Secretary may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

(3) Any State which has entered into an administration agreement under this subsection shall, at such times and in such installments as may be agreed upon between the Secretary and the State, pay to the Secretary an amount equal to the expenditures made by the Secretary as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a).

(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act (as so in effect).

(2) Supplementary payments made by the Secretary (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972, be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Secretary, the provisions of subsection (b) of such section 401.

(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Secretary under section 1616 of the Social Security Act under which—

(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

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[2]See P.L. 94-566, §503, for the situation in which payments under this subsection are deemed to be benefits under title XVI of the Social Security Act, in Vol. II, p. 683.

[2]See P.L. 96-265, §201(e), with respect to the maintenance of separate accounts in Vol. II, p. 717.

(e) Except as the Secretary may by regulations otherwise provide, the provisions of title XVI of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title, relating to the terms and conditions under which the benefits authorized by such title are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Secretary by such title may, where appropriate, be exercised by him in the administration of this section.

(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act.

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COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

SEC. 230. [42 U.S.C. 1396a note] In the case of any State plan (approved under title XIX of the Social Security Act) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act, there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

(1) the individual (referred to in the last sentence of section 1905(a) of such Act) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

PERSONS IN MEDICAL INSTITUTIONS

SEC. 231. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for all (or any part of) the month of December 1973—

(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act, and

(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act, and

(B),[4] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

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[4] As in original.

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

SEC. 232. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for the month of December 1973 was eligible for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act), shall be deemed for purposes of title XIX to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

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[*Internal References.*—Social Security Act §§228(d); 1127(b); 1617(a), (b), and (c); 1618(a), (e), (f), and (g); 1620(b); 1631(b), (e), (g), and (i); 1634(b); 1905(k) and (q); and 1926(a) and (b) cite Public Law 93-66. Social Security Act §§1611 (catchline) and 1902(a) have footnotes referring to P.L. 93-66.]

P.L. 93-86, Approved August 10, 1973 (87 Stat. 221)
Agriculture and Consumer Protection Act of 1973

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SEC. 4. [7 U.S.C. 612c note] (a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1986, 1987, 1988, 1989, and 1990, purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, supplemental feeding programs wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1) or the Temporary Emergency Food Assistance Act of 1983, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

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[*Internal Reference.*—Social Security Act §1920(b) cites the Agriculture and Consumer Protection Act of 1973.]

P.L. 93-112, Approved September 26, 1973 (87 Stat. 355)
Rehabilitation Act of 1973

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TITLE I—VOCATIONAL REHABILITATION SERVICES

PART A—GENERAL PROVISIONS

DECLARATION OF PURPOSE; AUTHORIZATION OF APPROPRIATIONS

SEC. 100. [29 U.S.C. 720] (a) The purpose of this title is to authorize grants to assist States to meet the current and future needs of individuals with handicaps, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

(b)(1)(A) For the purpose of making grants to States under part B of this title (other than grants under section 112) to assist States in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 101, there is authorized to be appropriated $1,281,000,000 for fiscal year 1987 and the amount determined under subsection (c) for each of the fiscal years 1988, 1989, 1990, and 1991. The amount determined under subsection (c) for each fiscal year shall be based upon the amount authorized by this subsection, or the amount appropriated for this subsection, whichever is higher, plus the amount of the Consumer Price Index addition determined under subsection (c) for the immediately preceding fiscal year.

(B) In addition, there are authorized to be appropriated for such purpose such additional sums as may be necessary for each of the fiscal years 1987 through 1991. Any such sums shall be allocated in accordance with section 110(a)(4).

(C) In no event may the amount appropriated for the purpose of making grants to States under part B of this title (other than section 112) be more than $1,281,000,000 for fiscal year 1987, $1,409,100,000 for fiscal year 1988, $1,550,010,000 for fiscal year 1989, $1,705,011,000 for fiscal year 1990, and $1,875,512,100 for fiscal year 1991.

(2) For the purpose of allotments under section 120(a)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.[1]

(c)(1) No later than November 15 of each fiscal year (beginning with the fiscal year 1979), the Secretary of Labor shall publish in the Federal Register the percentage change in the Consumer Price Index[2] published for October of the preceding fiscal year and October of the fiscal year in which such publication is made.

(2)(A) If in any fiscal year the percentage change published under paragraph (1) indicates an increase in the Consumer Price Index[3], then the amount authorized to be appropriated under subsection (b)(1) for the subsequent fiscal year is the amount authorized to be appropriated for the fiscal year in which the publication is made under paragraph (1) increased by such percentage change.

(B) If in any fiscal year the percentage change published under paragraph (1) does not indicate an increase in the Consumer Price Index[4], then the amount authorized to be appropriated under subsection (b)(1) for the subsequent fiscal year is the amount authorized to be appropriated for the fiscal year in which the publication is made under paragraph (1).

(3) For purposes of this section[5], the term "Consumer Price Index[6]" means the Consumer Price Index for All Urban Consumers, published monthly by the Bureau of Labor Statistics.

(d)(1)(A) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(i) of the authorization of appropriations for the program authorized by the State grant program under part B of this title; or

(ii) of the duration of the program authorized by the State grant program under part B of this title;

has passed legislation which would have the effect of extending the authorization or duration (as the case may be) of such program, such authorization is automatically extended for one additional year for the program authorized by this title.

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[1] P.L. 100-630, §202(a)(1), struck out paragraph (3).
[2] P.L. 100-630, §202(a)(2)(A), struck out "price index" and substituted "Consumer Price Index".
[3] See footnote 2.
[4] See footnote 2.
[5] P.L. 100-630, §202(a)(2)(B), struck out "subsection" and substituted "section".
[6] See footnote 2.

(B) The amount authorized to be appropriated for the additional fiscal year described in subparagraph (A) shall be an amount equal to the amount appropriated for such program for fiscal year 1991, or the amount authorized to be appropriated for such program for fiscal year 1991, whichever is higher, plus the amount of the Consumer Price Index addition determined under subsection (c) for the immediately preceding fiscal year.[7]

(2)(A) For the purposes of subdivision (i) of paragraph (1), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(B) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of the program authorized by this title, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of paragraph (1) of this subsection which follows subdivision (ii) of paragraph (1) is in operation.

STATE PLANS

SEC. 101. [29 U.S.C. 721] (a) In order to be eligible to participate in programs under this title, a State shall submit to the Commissioner a State plan for vocational rehabilitation services for a three-year period and, upon request of the Commissioner, shall make such annual revisions in the plan as may be necessary. Each such plan shall—

(1)(A) designate a State agency as the sole State agency to administer the plan, or to supervise its administration by a local agency, except that (i) where,[8] under the State's law,[9] the State agency for the blind or other agency which provides assistance or services to the adult blind[10] is authorized to provide vocational rehabilitation services to such individuals, such agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency with respect to the rest of the State plan, and (ii) the Commissioner, upon the request of a State, may authorize such agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit such agencies to carry out a joint program to provide services to individuals with handicaps, and may waive compliance with respect to vocational rehabilitation services furnished under such programs with the requirement of clause (4) of this subsection that the plan be in effect in all political subdivisions of that State;

(B) provide that the State agency so designated to administer or supervise the administration of the State plan, or (if there are two State agencies designated under subclause (A) of this clause) to supervise or administer the part of the State plan that does not relate to services for the blind, shall be (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with handicaps, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State;

(2) provide, except in the case of agencies described in clause (1)(B)(i)—

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with handicaps, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

(B)(i) that such unit shall be located at an organizational level and shall have an organizational status within such State agency comparable to that of other major organizational units of such agency, or (ii) in the case of an agency described in clause (1)(B)(ii), either that such unit shall be so located and have such status, or that the director of such unit shall be the executive officer of such State agency; except that, in the case of a State which has designated only one State agency pursuant to clause (1) of this subsection,

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[7] P.L. 100-630, §202(a)(3), amended paragraph (1) in its entirety.
[8] P.L. 100-630, §202(b)(1)(A), inserted a comma.
[9] P.L. 100-630, §202(b)(1)(B), inserted a comma.
[10] P.L. 100-630, §202(b)(1)(C), struck out a comma.

such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of such agency, and assign responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of this clause applying separately to each of such units;

(3) provide for financial participation by the State, or if the State so elects, by the State and local agencies to meet the amount of the non-Federal share;

(4) provide that the plan shall be in effect in all political subdivisions, except that in the case of any activity which, in the judgment of the Commissioner, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of individuals with handicaps or groups of individuals with handicaps the Commissioner may waive compliance with the requirement herein that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by the Commissioner[11], but only if the non-Federal share of the cost of such vocational rehabilitation services is met from funds made available by a local agency (including, to the extent permitted by such regulations, funds contributed to such agency by a private agency, organization, or individual);

(5)(A) contain the plans, policies, and methods to be followed in carrying out the State plan and in its administration and supervision, including the results of a comprehensive, Statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment, a description of the method to be used to expand and improve services to individuals with the most severe handicaps,[12] including individuals served under part C of title VI of this Act, and a description of the method to be used to utilize existing rehabilitation facilities to the maximum extent feasible; and, in the event that vocational rehabilitation services cannot be provided to all eligible individuals with handicaps who apply for such services, (i) show and provide the justification for the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided,,[13] and (ii) show the outcomes and service goals,,[14] and the time within which they may be achieved, for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving individuals with handicaps, established in regulations prescribed by the Commissioner[15];

(B) provide satisfactory assurances to the Commissioner that the State has studied and considered a broad variety of means for providing services to individuals with the most severe handicaps; and

(C) describe how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;

(6)(A) provide for such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Commissioner to be necessary for the proper and efficient administration of the plan (including a requirement that the State agency and facilities in receipt of assistance under this title shall take affirmative action to employ and advance in employment qualified individuals with handicaps covered under, and on the same terms and conditions as set forth in, section 503); and

(B) provide satisfactory assurances that facilities used in connection with the delivery of services assisted under the plan will comply with the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

(7) contain (A) provisions relating to the establishment and maintenance of personnel standards, which are consistent with any State licensure laws and regulations, including provisions relating to the tenure, selection, appointment, and qualifications of personnel, (B) provisions relating to the establishment and maintenance of minimum standards governing the facilities and qualified personnel utilized therein[16] the provision of vocational rehabilitation services, but the Commissioner shall exercise no authority with respect to the selection, method of selection, tenure of office, or compensation of any individual employed in accordance with such provision, and (C) provisions relating to the establishment

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[11]P.L. 100-630, §202(b)(2), struck out "him" and substituted "the Commissioner".
[12]P.L. 100-630, §202(b)(3), struck out "with handicaps with the most severe handicaps" and substituted "with the most severe handicaps,".
[13]P.L. 100-630, §202(b)(4), inserted a comma. As in original. One comma should be stricken.
[14]P.L. 100-630, §202(b)(5), inserted a comma. As in original. One comma should be stricken.
[15]As in original.
[16]P.L. 100-630, §202(b)(6), struck out "in" and substituted "therein".

and maintenance of minimum standards to assure the availability of personnel, to the maximum extent feasible, trained to communicate in the client's native language or mode of communication;

(8) provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) and clause (12) of section 103(a), and for the provision of such other services as are specified under such section after a determination that comparable services and benefits are not available under any other program, except that such determinations shall not be required where it would delay the provision of such services to any individual at extreme medical risk;

(9) provide that (A) an individualized written rehabilitation program meeting the requirements of section 102 will be developed for each individual with handicaps eligible for vocational rehabilitation services under this Act, (B) such services will be provided under the plan in accordance with such program, and (C) records of the characteristics of each applicant will be kept specifying, as to those individuals who apply for services under this title and are determined not to be eligible therefor, the reasons for such determinations in such detail as required by the Commissioner in order for the Commissioner[17] to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of the Commissioner's[18] responsibilities under section 13, and that the State agency will at least annually categorize and analyze such reasons and numbers and report this information to the Commissioner and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 102;

(10) provide that the State agency will make such reports in such form, containing such information (including the data described in subclause (C) of clause (9) of this subsection, periodic estimates of the population of individuals with handicaps eligible for services under this Act in such State, specifications of the number of such individuals who will be served with funds provided under this Act and the outcomes and service goals to be achieved for such individuals in each priority category specified in accordance with clause (5) of this subsection, and the service costs for each such category), and at such time as the Comissioner may require to carry out the functions of the Commissioner under this title, and comply with such provisions as are necessary to assure the correctness and verification of such reports;

(11) provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for individuals with handicaps, veterans programs, community mental health programs, manpower programs, and public employment offices, and the Social Security Administration of the Department of Health and Human Services, the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehabilitation of individuals with handicaps (specifically including arrangements for the coordination of services to individuals eligible for services under this Act, the Education of the Handicapped Act, and the Carl D. Perkins Vocational Education Act);

(12)(A) provide satisfactory assurances to the Commissioner that, in the provision of vocational rehabilitation services, maximum utilization shall be made of public or other vocational or technical training facilities or other appropriate resources in the community; and

(B) provide (as appropriate) for entering into agreements with the operators of rehabilitation facilities for the provision of services for the rehabilitation of individuals with handicaps;

(13)(A) provide that vocational rehabilitation services provided under the State plan shall be available to any civil employee of the United States who is[19] disabled while in the performance of the employee's[20] duty on the same terms and conditions as apply to other persons, and

(B) provide that special consideration will be given to the rehabilitation under this Act of a[21] individual with handicaps whose handicapping condition arises from a disability sustained in the line of duty while such individual was performing as a public safety officer if[22] the proximate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement,

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[17] P.L. 100-630, §202(b)(7)(A), struck out "him" and substituted "the Commissioner".
[18] P.L. 100-630, §202(b)(7)(B), struck out "his" and substituted "the Commissioner's".
[19] P.L. 100-630, §202(b)(8)(A), inserted "who is".
[20] P.L. 100-630, §202(b)(8)(B), struck out "his" and substituted "the employee's".
[21] As in original; "a" should be "an".
[22] P.L. 100-630, §202(b)(9), struck out "and" and substituted "if".

execution, and administration of law or fire prevention, firefighting, or related public safety activities;

(14) provide that no residence requirement will be imposed which excludes from services under the plan any individual who is present in the State;

(15) provide for continuing statewide studies of the needs of individuals with handicaps and how these needs may be most effectively met, including—

(A) conducting a full needs assessment for serving individuals with severe handicaps;

(B) an assessment of the capacity and condition of rehabilitation facilities, plans for improving such facilities, and policies for the use thereof by the State agency; and

(C) review of the efficacy of the criteria employed with respect to ineligibility determinations described in paragraph (9)(C) of this subsection with a view toward the relative need for services to significant segments of the population of individuals with handicaps and the need for expansion of services to those individuals with the most severe handicaps;[23]

(16) provide for (A) periodic review and reevaluation of the status of individuals with handicaps placed in extended employment in rehabilitation facilities (including workshops) to determine the feasibility of their employment, or training for employment, in the competitive labor market, and (B) maximum efforts to place such individuals in such employment or training whenever it is determined to be feasible;

(17) provide that where such State plan includes provisions for the construction of rehabilitation facilities—

(A) the Federal share of the cost of construction thereof for a fiscal year will not exceed an amount equal to 10 per centum of the State's allotment for such year,

(B) the provisions of section 306 shall be applicable to such construction and such provisions shall be deemed to apply to such construction, and

(C) there shall be compliance with regulations the Commissioner shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of rehabilitation facilities) because its plan includes such provisions for construction;

(18) provide satisfactory assurances to the Commissioner that the State agency designated pursuant to clause (1) (or each State agency if two are so designated) and any sole local agency administering the plan in a political subdivision of the State will take into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups thereof who are recipients of vocational rehabilitation services (or, in appropriate cases, their parents or guardians), personnel working in the field of vocational rehabilitation, and providers of vocational rehabilitation services;

(19) provide satisfactory assurances to the Commissioner that the continuing studies required under clause (15) of this subsection, as well as an annual evaluation of the effectiveness of the program in meeting the goals and priorities set forth in the plan, will form the basis for the submission, from time to time as the Commissioner may require, of appropriate amendments to the plan;

(20) provide satisfactory assurances to the Commissioner that, as appropriate, the State shall actively consult with Indian tribes and tribal organizations and native Hawaiian organizations in the development of the State plan, and that, except as otherwise provided in section 130, the State shall provide vocational rehabilitation services to American Indians with handicaps[24] residing in the State to the same extent as the State provides such services to other significant segments of the population of individuals with handicaps residing in the State;

(21) provide that the State agency has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for individuals with handicaps under part B of title VI upon a determination by such agency that such profitmaking organizations are better qualified to provide such rehabilitation services than nonprofit agencies and organizations;

(22) provide for the establishment and maintenance of information and referral programs (the staff of which shall include, to the maximum extent feasible, interpreters for the deaf) in sufficient numbers to assure that individuals with handicaps within the State are afforded accurate vocational rehabilitation infor-

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[23] P.L. 100-630, §202(b)(10), amended paragraph (15) in its entirety. Executed as if "(15)" was included in the quoted material.

[24] P.L. 100-630, §202(b)(11), struck out "handicapped American Indians" and substituted "American Indians with handicaps".

mation and appropriate referrals to other Federal and State programs and activities which would benefit them;

(23)(A) provide satisfactory assurances that in the formulation of policies governing the provision of the rehabilitation services consistent with the State plan, and any revisions, that the State agency conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups and organizations and all segments of the public an opportunity to comment on the State plan, and (B) include a summary of such comments and the State agency's response to such comments;

(24) contain the plans, policies, and methods to be followed to assist in the transition from education to employment related activities; and

(25) provide satisfactory assurances that the State has an acceptable plan for part C of title VI.

(b) The Commissioner shall approve any plan which the Commissioner finds fulfills the conditions specified in subsection (a) of this section, and shall disapprove any plan which does not fulfill such conditions. Prior to such disapproval, the Commissioner shall notify a State of the intention to disapprove its plan, and shall afford such State reasonable notice and opportunity for hearing.

(c)(1) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this section, finds that—

(A) the plan has been so changed that it no longer complies with the requirements of subsection (a) of this section; or

(B) in the administration of the plan there is a failure to comply substantially with any provision of such plan,

the Commissioner shall notify such State agency that no further payments will be made to the State under this title (or, in the discretion of the Commissioner, that such further payments will be reduced, in accordance with regulations the Commissioner shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until the Commissioner is satisfied there is no longer any such failure. Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State under this title (or shall limit payments to projects under those parts of the State plan in which there is no such failure).

(2) The Commissioner may, in accordance with regulations the Commissioner shall prescribe, disburse any funds withheld from a State under paragraph (1) to any public or nonprofit private organization or agency within such State or to any political subdivision of such State submitting a plan meeting the requirements of subsection (a). The Commissioner may not make any payment under this paragraph unless the entity to which such payment is made has provided assurances to the Commissioner that such entity will contribute, for purposes of carrying out such plan, the same amount as the State would have been obligated to contribute if the State received such payment.

(d)(1) Any State which is dissatisfied with a final determination of the Commissioner under subsection (b) or (c) may file a petition for judicial review of such determination in the United States Court of Appeals for the circuit in which the State is located. Such a petition may be filed only within the thirty-day period beginning on the date notice of such final determination was received by the State. The clerk of the court shall transmit a copy of the petition to the Commissioner or to any officer designated by the Commissioner for that purpose. In accordance with section 2112 of title 28, United States Code, the Commissioner shall file with the court a record of the proceeding on which the Commissioner based the determination being appealed by the State. Until a record is so filed, the Commissioner may modify or set aside any determination made under such proceedings.

(2) If, in an action under this subsection to review a final determination of the Commissioner under subsection (b) or (c), the petitioner or the Commissioner applies to the court for leave to have additional oral submissions or written presentations made respecting such determination, the court may, for good cause shown, order the Commissioner to provide within thirty days an additional opportunity to make such submissions and presentations. Within such period, the Commissioner may revise any findings of fact, modify or set aside the determination being reviewed, or make a new determination by reason of the additional submissions and presentations, and shall file such modified or new determination, and any revised findings of fact, with the return of such submissions and presentations. The court shall thereafter review such new or modified determination.

(3)(A) Upon the filing of a petition under paragraph (1) for judicial review of a determination, the court shall have jurisdiction (i) to grant appropriate relief as provided in chapter 7 of title 5, United States Code, except for interim relief with respect to a determination under subsection (c), and (ii) except as otherwise provided in

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subparagraph (B), to review such determination in accordance with chapter 7 of title 5, United States Code.

(B) Section 706 of title 5, United States Code, shall apply to the review of any determination under this subsection, except that the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such determination if the court finds that the determination is not supported by substantial evidence in the record of the proceeding submitted pursuant to paragraph (1), as supplemented by any additional submissions and presentations filed under paragraph (2).

INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM

SEC. 102. [29 U.S.C. 722] (a) The Commissioner shall insure that the individualized written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis, required by section 101(a)(9) in the case of each individual with handicaps is developed jointly by the vocational rehabilitation counselor or coordinator and the individual with handicaps (or, in appropriate cases, such individual's parents or guardians), and that such program meets the requirements set forth in subsection (b) of this section. Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual, and, as appropriate, such specification of reasons for such an ineligibility determination shall set forth the rights and remedies, including, where appropriate, recourse to the processes set forth in subsections (b)(2) and (d) of this section, and the availability of services provided under section 112[25], available to the individual in question.

(b)(1) Each individualized written rehabilitation program shall—

(A) be developed on the basis of a determination of employability designed to achieve the vocational objective of the individual;

(B) include a statement of the long-range rehabilitation goals based on an assessment determined through an evaluation of rehabilitation potential for the individual;

(C) include a statement of the intermediate rehabilitation objectives related to the attainment of such goals based on an assessment determined through an evaluation of rehabilitation potential;

(D) where appropriate, include a statement of the specific rehabilitation engineering services to be provided to assist in the implementation of intermediate objectives and long-range rehabilitation goals for the individual;

(E) include an assessment of the expected need for post-employment services;

(F) include a statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and the anticipated duration of each such service;

(G) include objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved;

(H) provide for a reassessment of the need for post-employment services prior to case closure and, where appropriate, for individuals with severe handicaps[26], the development of a statement detailing how such services shall be provided or arranged through cooperative agreements with other service providers; and

(I) provide a description of the availability of a client assistance project established in such area pursuant to section 112.

(2) Each individualized written rehabilitation program shall be reviewed annually,[27] at which time such individual (or,[28] in appropriate cases, the parents or guardian of the individual) will be afforded an opportunity to review such program and jointly redevelop and agree to its terms. Each individualized written rehabilitation program shall be revised as needed.

(c) The Commissioner shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 101 in the case of each individual with handicaps, emphasis is placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus is[29] not eligible for

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[25] P.L. 100-630, §202(c)(1), struck out "recourse to the process set forth in subsection (b)(5) of this section" and substituted ", where appropriate, recourse to the processes set forth in subsections (b)(2) and (d) of this section, and the availability of services provided under section 112".

[26] P.L. 100-630, §202(c)(2), struck out "severely handicapped individuals" and substituted "individuals with severe handicaps".

[27] P.L. 100-630, §202(c)(3)(A), inserted a comma.

[28] P.L. 100-630, §202(c)(3)(B), inserted a comma.

[29] P.L. 100-630, §202(c)(4), inserted "is".

vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate cases, such individual's parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated that such individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section.

(d)(1) Except as provided in paragraph (4), the Director of any designated State unit shall establish procedures for the review of determinations made by the rehabilitation counselor or coordinator under this section, upon the request of an individual with handicaps (or, in appropriate cases, such individual's parents or guardian).

(2) Such review procedures shall provide an opportunity to such individuals for the submission of additional evidence and information to an impartial hearing officer who shall make a decision based on the provisions of the State plan approved under section 101(a).

(3)(A) Within 20 days of the mailing of the decision to the individual with handicaps (or, in appropriate cases, such individual's parents or guardian), the Director shall notify such individuals of the intent to review such decision in whole or in part.

(B) If the Director decides to review the decision, such individuals shall be provided an opportunity for the submission of additional evidence and information relevant to a final decision.

(C) A final decision shall be made in writing by the Director and shall include a full report of the findings and the grounds for such decision. When a final decision is made, a copy of such decision shall be provided to such individuals.

(D) Except as provided in paragraph (4), the Director may not delegate responsibility to make any such final decision to any other officer or employee of the designated State unit.

(4)(A) A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations under this Act, is authorized to carry out the responsibilities of the Director under this subsection.

(B) The provisions of paragraphs (1) through (3) of this subsection shall not apply to any State to which subparagraph (A) of this paragraph applies.

(5)(A) The Director shall collect data described in subparagraph (B) and prepare and submit to the Commissioner a report containing such data. For the report submitted on or before February 1, 1988, the Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 13.

(B) The data required to be collected under this paragraph shall include—

(1) a description of State procedures for review;

(2) the number of appeals to the independent hearing officer and the State Director, including the type of complaint and the issues involved;

(3) the number of decisions by the State Director reversing in whole or in part the decision of the impartial hearing officer; and

(4) the number of decisions affirming the position of the individual with handicaps assisted through the client assistance program.

SCOPE OF VOCATIONAL REHABILITATION SERVICES

SEC. 103. [29 U.S.C. 723] (a) Vocational rehabilitation services provided under this Act are any goods or services necessary to render an individual with handicaps employable, including, but not limited to, the following:

(1) evaluation of rehabilitation potential, including diagnostic and related services[30] incidental to the determination of eligibility for, and the nature and scope of, services to be provided, including, where appropriate—

(A) an evaluation by personnel skilled in rehabilitation engineering technology; and

(B) an examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;[31]

(2) counseling, guidance, referral, and placement services for individuals with handicaps, including followup, follow-along, and specific postemployment services

[30] P.L. 100-630, §202(d)(1)(A), struck out a comma.

[31] P.L. 100-630, §202(d)(1)(B), struck out ", evaluation by personnel skilled in rehabilitation engineering technology, examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;" and substituted a dash and subparagraphs (A) and (B).

necessary to assist such individuals to[23] maintain or regain employment, and other services designed to help individuals with handicaps secure needed services from other agencies, where such services are not available under this Act;

(3) vocational and other training services for individuals with handicaps, which shall include personal and vocational adjustment, books, and other training materials, and services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals: *Provided*, That no training services in institutions of higher education shall be paid for with funds under this title unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

(4) physical and mental restoration services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time, (B) necessary hospitalization in connection with surgery or treatment, (C) prosthetic and orthotic devices, (D) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select, (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from end-stage renal disease, and (F) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;

(5) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

(6) interpreter services for deaf individuals, and reader services for those individuals determined to be blind after an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for individuals with handicaps to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for the blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service;

(11) telecommunications, sensory, and other technological aids and devices; and

(12) rehabilitation engineering services.

(b) Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe handicaps the operation of which can be improved by management services and supervision provided by the State agency, the provision of such services and supervision, along or together with the acquisition by the State agency of vending facilities or other equipment and initial stocks and supplies;

(2) the construction or establishment of public or nonprofit rehabilitation facilities and the provision of other facilities and services (including services offered at rehabilitation facilities) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one individual with handicaps;

(3) the use of existing telecommunications systems (including telephone, television, satellite, radio, and other similar systems) which have the potential for substantially improving service delivery methods, and the development of appropriate programing to meet the particular needs of individuals with handicaps; and

(4) the use of services providing recorded material for the blind and captioned films or video cassettes for the deaf.

NON-FEDERAL SHARE FOR CONSTRUCTION

SEC. 104. [29 U.S.C. 724] For the purpose of determining the amount of payments to States for carrying out part B of this title (or to an Indian tribe under part D of this title), the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Commissioner, shall include contributions of funds

[23] P.L. 100-630, §202(d)(2), inserted "to".

made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of construction or establishment of a public or nonprofit rehabilitation facility, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to construction or establishment of such facility.

PART B—BASIC VOCATIONAL REHABILITATION SERVICES

STATE ALLOTMENTS

SEC. 110. [29 U.S.C. 730] (a)(1) Subject to the provisions of subsection (d), for each fiscal year beginning before October 1, 1978, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under section 100(b)(1) for allotment under this section as the product of (A) the population of the State, and (B) the square of its allotment percentage, bears to the sum of the corresponding products for all the States.

(2)(A) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment in an amount equal to the amount such State received under paragraph (1) for the fiscal year ending September 30, 1978, and an additional amount determined pursuant to subparagraph (B) of this paragraph.

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 100(b)(1)(A) for allotment under this section in excess of the amount appropriated under section 100(b)(1)(A) for the fiscal year ending September 30, 1978, in an amount equal to the sum of—

(i) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and the square of its allotment percentage bears to the sum of the corresponding products for all the States; and

(ii) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and its allotment percentage bears to the sum of the corresponding products for all the States.

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) under this subsection for any fiscal year which is less than one-third of 1 percent of the amount appropriated under section 100(b)(1)(A), or $3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(4) For each fiscal year beginning on or after October 1, 1984, for which any amount is appropriated pursuant to section 100(b)(1)(B), each State shall receive an allocation (from such appropriated amount) in addition to the allotment to which such State is entitled under paragraphs (2) and (3) of this subsection. Such additional allocation shall be an amount which bears the same ratio to the amount so appropriated as that State's allotment under paragraphs (2) and (3) of this subsection bears to the sum of such allotments of all the States.

(b)(1) If the payment to a State under section 111(a) for a fiscal year is less than the total payments such State received under section 2 of the Vocational Rehabilitation Act for the fiscal year ending June 30, 1973, such State shall be entitled to an additional payment (subject to the same terms and conditions applicable to other payments under this part) equal to the difference between such payment under section 111(a) and the amount so received by it.

(2) If a State receives as its Federal share under section 111(a) for any fiscal year less than the applicable Federal share of the expenditure of such State for fiscal year 1972 for vocational rehabilitation services under the plan for such State approved under section 101 (including any amount expended by such State for the administration of the State plan but excluding any amount expended by such State from non-Federal sources for construction under such plan), such State shall be entitled to an additional payment for such fiscal year, subject to the same terms and conditions applicable to other payments under this part, equal to the difference between such payment under section 111(a) and an amount equal to the applicable Federal share of such expenditure for vocational rehabilitation services.

(3) Any payment attributable to the additional payment to a State under this subsection shall be made only from appropriations specifically made to carry out this subsection, and such additional appropriations are hereby authorized.

(c)(1) Not later than forty-five days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the

Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this title to one or more other States to the extent the Commissioner determines that such other State will be able to use such additional amount during that fiscal year or to pay for initial expenditures during the subsequent fiscal year for carrying out such purposes.

(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(d)(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 100(b)(1) for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part D of this title.

(2) For any fiscal year the sum shall be not less than 1/4 of one percent and not more than one percent of the amount under paragraph (1), as determined by the Secretary.

PAYMENTS TO STATES

SEC. 111. [29 U.S.C. 731] (a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year (including any additional payment to it under section 110(b)), the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

(2)(A) The total of payments under paragraph (1) to a State for a fiscal year may not exceed its allotment under subsection (a) (and any additional payment under subsection (b)), of section 110 for such year and such payments shall not be made in an amount which would result in a violation of the provisions of the State plan required by section 101(a)(17).

(B) For fiscal year 1990 and each fiscal year thereafter, the amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State plan under this title for the previous fiscal year are less than the average of the total of such expenditures for the three fiscal years preceding that previous fiscal year.[33]

(C) The Commissioner may waive or modify any requirement or limitation under paragraphs (A) and (B) if the Commissioner determines that a waiver or modification is an equitable response to exceptional or uncontrollable circumstances affecting the State.

(b) The method of computing and paying amounts pursuant to subsection (a) shall be as follows:

(1) The Commissioner shall, prior to the beginning of each calendar quarter or other period prescribed by the Commissioner, estimate the amount to be paid to each State under the provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation[34] as the Commissioner may find necessary.

(2) The Commissioner shall pay, from the allotment available therefor, the amount so estimated by the Commissioner for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which the Commissioner finds that the estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the General Accounting Office, shall be made through the disbursing facilities of the Treasury Department, and shall be made in such installments as the Commissioner may determine.

CLIENT ASSISTANCE PROGRAM

SEC. 112. [29 U.S.C. 732] (a) From funds appropriated under subsection (i), the Secretary shall, in accordance with this section, make grants to States to establish and carry out client assistance programs to provide assistance in informing and advising all clients and client applicants of all available benefits under this Act, and, upon

[33] P.L. 100-630, §202(e)(2)(A), amended subparagraph (B) in its entirety.
[34] P.L. 100-630, §202(e)(3), struck out a comma.

request of such clients or client applicants, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this Act, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under this Act. The client assistance program may provide information on the available services under this Act to any individuals with handicaps[35] in the State.

(b) No State may receive payments from its allotment under this Act in any fiscal year unless the State has in effect not later than October 1, 1984, a client assistance program[36] which—

(1) has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with handicaps who are receiving treatments, services, or rehabilitation under this Act within the State; and

(2) meets the requirements of designation under subsection (c).

(c)(1)(A) The Governor shall designate a public or private agency to conduct the client assistance program under this section. Except as provided in the last sentence of this paragraph, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under this Act. If there is an agency in the State which has, or had, prior to the date of enactment of the Rehabilitation Amendments of 1984, served as a client assistance agency under this section and which received Federal financial assistance under this Act, the Governor may, in the initial designation, designate an agency which provides treatment, services, or rehabilitation to individuals with handicaps under this Act.

(B) The Governor may not redesignate the agency designated under subparagraph (A) without good cause and only after notice and an opportunity for public comment has been given of the intention to make such redesignation.

(2) In carrying out the provisions of this section, the Governor shall consult with the director of the State vocational rehabilitation agency, the head of the developmental disability protection and advocacy agency, and with representatives of professional and consumer organizations serving individuals with handicaps in the State.

(3) The agency designated under this subsection shall be accountable for the proper use of funds made available to the agency.

(4) For the purpose of this subsection, the term "Governor" means the chief executive of the State.[37]

(d) The agency designated under subsection (c) of this section may not bring any class action in carrying out its responsibilities under this section.

(e)(1)(A) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than $50,000.

(B) The Secretary shall allot $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(C) For the purpose of this paragraph, the term "State" does not include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(D)(i) In any fiscal year that the funds appropriated for such fiscal year exceed $7,500,000, the minimum allotment shall be $75,000 for States and $45,000 for territories.

(ii) Subject to subsection (c), the Commissioner may increase the minimum allotment under subparagraph (A) for any fiscal year for which funds appropriated under this section for such fiscal year exceed the sums appropriated under this section for the preceding fiscal year by more than the percentage increase in the Consumer Price Index published monthly by the Bureau of Labor Statistics.

(2) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallotment by the Secretary at appropriate times to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any such amount so reallotted to a State for a fiscal year shall be deemed to be a part of its allotment for such fiscal year.

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[35] P.L. 100-630, §202(f)(1), struck out "handicapped individuals" and substituted "individuals with handicaps".
[36] P.L. 100-630, §202(f)(2), struck out a comma.
[37] P.L. 100-630, §202(f)(3), added paragraph (4).

(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).

(f) No grant may be made under this section unless the State submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems necessary to meet the requirements of this section.

(g) The Secretary shall prescribe regulations applicable to the client assistance program which shall include the following requirements:

(1) No employees of such programs shall, while so employed, serve as staff or consultants of[38] any rehabilitation project, program, or facility receiving assistance under this Act in the State.

(2) Each program shall be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities.

(3) Each program shall contain provisions designed to assure that to the maximum extent possible mediation procedures are used prior to resorting to administrative or legal remedies.

(4) The agency designated under subsection (c) shall submit an annual report to the Secretary on the operation of the program during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by such program. A copy of each such report shall be submitted to the appropriate committees of the Congress by the Secretary, together with a summary of such reports and the Secretary's[39] evaluation of the program, including appropriate recommendations.

(h)(1) The Commissioner shall conduct a comprehensive evaluation of the client assistance program authorized by this section, and submit a report to Congress, not later than February 1, 1986.

(2) In conducting the study required by this subsection, the Commissioner shall address and report the following information for each State that received a client assistance program grant. The study shall include—

(A) the numbers of individuals with handicaps assisted through the client assistance program;

(B) the handicapping conditions of the individuals assisted, and the proportion each type of individuals represents of the total population assisted;

(C) the types of services provided, cross-referenced to types of individuals with handicaps assisted through each service;

(D) the type of organization or agency which administers the client assistance program;

(E) the physical proximity of the client assistance program to the State vocational rehabilitation agency; and

(F) the type of organizational structure used by the client assistance program to deliver services.

(3) In conducting the study the Commissioner shall make the following comparisons:

(A) differences in service delivery patterns in client assistance programs in urban and rural areas;

(B) differences in service delivery patterns among client assistance programs administered in various organizational settings; and

(C) differences in service delivery patterns among client assistance programs established after the date of the enactment of the Rehabilitation Amendments of 1984[40] and those that were established prior to the date of the enactment of the Rehabilitation Amendments of 1984[41].

(4) The report shall include such recommendations, including recommendations for legislative proposals, as the Commissioner deems necessary.

(i) There are authorized to be appropriated $7,100,000 for fiscal year 1987, $7,550,000 for fiscal year 1988, and $8,000,000 for fiscal year 1989, $8,450,000 for fiscal year 1990, and $8,796,000 for fiscal year 1991,[42] to carry out the provisions of this section.

PART C—INNOVATION AND EXPANSION GRANTS

STATE ALLOTMENTS

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[38] P.L. 100-630, §202(f)(4), struck out a comma.
[39] P.L. 100-630, §202(f)(5), struck out "his" and substituted "the Secretary's".
[40] P.L. 100-630, §202(f)(6), struck out "this reauthorization" and substituted "the date of the enactment of the Rehabilitation Amendments of 1984".
[41] See footnote 40.
[42] P.L. 100-630, §202(f)(7), inserted a comma.

SEC. 120. [29 U.S.C. 740] (a)[43] From the sums available pursuant to section 100(b)(2) for any fiscal year for grants to States to assist them in meeting the costs described in section 121, each State shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of the State bears to the population of all the States. The allotment to any State under the preceding sentence for any fiscal year which is less than $50,000 shall be increased to that amount, and for the fiscal year ending June 30, 1974, no State shall receive less than the amount necessary to cover up to 90 per centum of the cost of continuing projects assisted under section 4(a)(2)(A) of the Vocational Rehabilitation Act, except that no such project may receive financial assistance under both the Vocational Rehabilitation Act and this Act for a total period of time in excess of five years. The total of the increase required by the preceding sentence shall be derived by proportionately reducing the allotments to each of the remaining States under the first sentence of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from thereby being reduced to less than $50,000.

(b) Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be utilized by such State in carrying out the purposes of this section, the Commissioner shall make such amount available for carrying out the purposes of this section to one or more other States which the Commissioner determines will be able to use additional amounts during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

PAYMENTS TO STATES

SEC. 121. [29 U.S.C. 741] (a) From each State's allotment under this part for any fiscal year, the Commissioner shall pay to such State or, at the option of the State agency designated pursuant to section 101(a)(1), to a public or nonprofit organization or agency, a portion of the cost of planning, preparing for, and initiating special programs under the State plan approved pursuant to section 101 to expand vocational rehabilitation services, including—

(1) programs to initiate or expand such services to individuals with the most severe handicaps;

(2) special programs under such State plan to initiate or expand services to classes of individuals with handicaps who have unusual or difficult problems in connection with their rehabilitation; and

(3) programs to maximize the use of technological innovations in meeting the employment training needs of both youths with handicaps and adults with handicaps[44].

Payments may also be made under this section for the costs of the construction of facilities to be used in providing services under such State plan if provision for such construction is included in such State plan. The Commissioner may require that any portion of a State's allotment under this section, but not more than 50 per centum of such allotment, may be expended in connection with only such projects as have first been approved by the Commissioner. Any grant of funds under this section which will be used for direct services to individuals with handicaps or for establishing or maintaining facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency designated pursuant to section 101.

(b) Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the project as approved, and sums appropriated for grants under this section shall remain available for such grants through fiscal year 1991. Payments with respect to any project may not exceed 90 per centum of the cost of such project. The non-Federal share of the cost of a project may be in cash or in kind and may include funds spent for project purposes by a cooperating public or nonprofit agency provided that it is not included as a cost in any other federally financed program.

(c) Payments under this section may be made in advance or by way of reimbursement for services performed and purchases made, as may be determined by the Commissioner, and shall be made on such conditions as the Commissioner finds necessary to carry out the purposes of this section.

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[43]P.L. 100-630, §202(g), struck out "(1)".

[44]P.L. 100-630, §202(h), struck out "handicapped youth and adults" and substituted "both youths with handicaps and adults with handicaps".

PART D—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

VOCATIONAL REHABILITATION SERVICES GRANTS

SEC. 130. [29 U.S.C. 750] (a) The Commissioner, in accordance with the provisions of this part,[45] may make grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for American Indians with handicaps[46] residing on such reservations. The non-Federal share of such costs may be in cash or in kind, fairly valued, and the Commissioner may waive such non-Federal share requirement in order to carry out the purposes of this Act.

(b)(1) No grant may be made under this part for any fiscal year unless an application therefor has been submitted to and approved by the Commissioner. The Commissioner may not approve an application unless the application—

(A) is made at such time, in such manner, and contains such information as the Commissioner may require;

(B) contains assurances that the rehabilitation services provided under this part to American Indians with handicaps[47] residing on a reservation in a State shall be, to the maximum extent feasible, comparable to rehabilitation services provided under this title to other individuals with handicaps residing in the State and that, where appropriate, may include services traditionally used by Indian tribes; and

(C) contains assurances that the application was developed in consultation with the designated State unit of the State.

(2) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act shall be applicable to any application submitted under this part. For purposes of this paragraph, any reference in any such provision to the Secretary of Education or to the Secretary of the Interior shall be considered to be a reference to the Commissioner.

(3) Any application approved under this part shall be effective for not less than twelve months or more than 36 months, except as determined otherwise by the Commissioner pursuant to prescribed regulations. The State shall continue to provide vocational rehabilitation services under its State plan to American Indians residing on a reservation whenever such State includes any such American Indians in its State population under section 110(a)(1).

(4) In making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part.

(5) Nothing in this section may be construed to authorize a separate service delivery system for Indian residents of a State who reside in non-reservation areas.

(c) The term "reservation" includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

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EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC. 501. [29 U.S.C. 791] (a) There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman[48] of the Equal Employment Opportunity Commission (hereafter in this section referred to as the "Commission")[49], the Administrator of Veterans' Affairs, and the Secretary of Labor, the Secretary of Education, and the Secretary of[50] Health and Human Services. The Secretary of Education and the Chairman of the [51] Commission shall serve as co-chairpersons[52] of the Committee. The resources of the President's Committees on Employment of People With Disabilities[53]

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[45] P.L. 100-630, §202(i)(1)(A), inserted a comma.

[46] P.L. 100-630, §202(i)(1)(B), struck out "handicapped American Indians" and substituted "American Indians with handicaps".

[47] P.L. 100-630, §202(i)(2), struck out "handicapped American Indians" and substituted "American Indians with handicaps".

[48] As in original. Probably should be "Director".

[49] P.L. 100-630, §206(a)(1), inserted "(hereafter in this section referred to as the 'Commission')".

[50] P.L. 100-630, §206(a)(3)(A), struck out "Secretaries of Labor and Education and" and substituted "Secretary of Labor, the Secretary of Education, and the Secretary of".

[51] P.L. 100-630, §206(a)(2), struck out "Equal Employment Opportunity".

[52] P.L. 100-630, §206(a)(3)(B), struck out "co-chairmen" and substituted "co-chairpersons".

[53] P.L. 100-630, §206(a)(3)(C), struck out "the Handicapped" in the second sentence and substituted "People With Disabilities". Executed as if this amendment reads "in the third sentence".

and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with handicaps, and to review, on a periodic basis, in cooperation with the[54] Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with handicaps, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the[55] Commission to assist the Commission[56] to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the[57] Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The[58] Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after the date of enactment of this Act, submit to the[59] Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with handicaps in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of employees with handicaps[60] are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission[61], if the Commission[62] determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with handicaps.

(c) The[63] Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with handicaps, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) The[64] Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with handicaps by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the[65] Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the[66] Commission under subsections (b) and (c) of this section.

(e) An individual who, as a part of an[67] individualized written rehabilitation program under a State plan approved under this Act, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f)(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of People With Disabilities[68] in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of People With Disabilities[68], special consideration shall be given to qualified individuals with handicaps.

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[54]See footnote 51.
[55]See footnote 51.
[56]P.L. 100-630, §206(a)(4), struck out "Office" and substitued "Commission".
[57]See footnote 51.
[58]See footnote 51.
[59]See footnote 51.
[60]P.L. 100-630, §206(a)(5)(A), struck out "handicapped employees" and substituted "employees with handicaps".
[61]P.L. 100-630, §206(a)(5)(B), struck out "Office" and substituted "Commission".
[62]See footnote 61.
[63]See footnote 51.
[64]See footnote 51.
[65]See footnote 51.
[66]See footnote 51.
[67]P.L. 100-630, §206(a)(6), struck out "a" and substituted "an".
[68]P.L. 100-630, §206(a)(7), struck out "the Handicapped" and substituted "People With Disabilities".
[68]See footnote 68.

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NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

SEC. 504. [29 U.S.C. 794] (a) [70] No otherwise qualified individual with handicaps in the United States, as defined in section 7(8), shall, solely by reason of her or[71] his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 1471(12)[72] of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.[73]

(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.[74]

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TITLE VI—EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED INDIVIDUALS

SHORT TITLE

SEC. 601. [29 U.S.C. 795 note] This title may be cited as the "Employment Opportunities for Handicapped Individuals Act".

PART A—COMMUNITY SERVICE EMPLOYMENT PILOT PROGRAMS FOR HANDICAPPED INDIVIDUALS

ESTABLISHMENT OF PILOT PROGRAM

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[70] P.L. 100-259, §4(1), inserted "(a)".
[71] P.L. 100-630, §206(d)(1), inserted "her or".
[72] P.L. 100-630, §206(d)(2), struck out "198(a)(10)" and substituted "1471(12)".
[73] P.L. 100-259, §4(2), added subsection (b).
[74] P.L. 100-259, §4(2), added subsection (c).

SEC. 611. [29 U.S.C. 795] (a) In order to promote useful opportunities in community service activities for individuals with handicaps who have poor employment prospects, the Secretary of Labor (hereinafter in this part referred to as the "Secretary") is authorized to establish a community service employment pilot program for individuals with handicaps. For purposes of this part, the term "eligible individuals" means persons who are individuals with handicaps (as defined in section 7(8) of this Act) and who are referred to programs under this part by designated State units.

(b)(1) The Secretary may enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to carry out the pilot program referred to in subsection (a). Such agreements may include provisions consistent with subsection (c) for the payment of the costs of projects developed by such organizations and agencies in cooperation with the Secretary. No payment shall be made by the Secretary toward the cost of any such project unless the Secretary determines that:

(A) Such project will provide employment only for eligible individuals, except that if eligible individuals are not available to serve as technical, administrative, or supervisory personnel for a project then such personnel may be recruited from among other individuals.

(B) Such project will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities.

(C) Such project will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects sponsored by organizations, other than political parties, exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, except for projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship.

(D) Such project will contribute to the general welfare of the community in which eligible individuals are employed under such project.

(E) Such project (i) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (ii) will not result in any displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and (iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed.

(F) Such project will not employ any eligible individual to perform work which is the same or substantially the same as that performed by any other person who is on layoff from employment with the agency or organization sponsoring such project.

(G) Such project will utilize methods of recruitment and selection (including the listing of job vacancies with the State agency units designated under section 101(a)(2)(A) to administer vocational rehabilitation services under this Act) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project.

(H) Such project will provide for (i) such training as may be necessary to make the most effective use of the skills and talents of individuals who are participating in the project, and (ii) during the period of such training, a reasonable subsistence allowance for such individuals and the payment of any other reasonable expenses related to such training.

(I) Such project will provide safe and healthy working conditions for any eligible individual employed under such project and will pay any such individual at a rate of pay not lower than the rate of pay described in paragraph (2).

(J) Such project will be established or administered with the advice of (i) persons competent in the field of service in which employment is being provided, and (ii) persons who are knowledgeable with regard to the needs of individuals with handicaps.

(K) Such project will pay any reasonable costs for work-related expenses, transportation, and attendant care incurred by eligible individuals employed under such project in accordance with regulations prescribed by the Secretary.

(L) Such project will provide appropriate placement services for employees under the project to assist them in locating unsubsidized employment when the Federal assistance for the project terminates.

(2) The rate of pay referred to in subparagraph (I) of paragraph (1) is the highest of the following:

(A) the[75] prevailing rate of pay for persons employed in similar occupations by the same employer.

[75] As in original. Probably should be "The".

(B) The minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 if such employee were not exempt from such Act under section 13 thereof.

(C) The State or local minimum wage for the most nearly comparable covered employment.

The Department of Labor shall not issue any certificate of exemption under section 14(c) of the Fair Labor Standards Act of 1938 with respect to any person employed in a project under this section.

(c)(1) The Secretary may pay not to exceed 90 percent of the cost of any project which is the subject of an agreement entered into under subsection (b). Notwithstanding the preceding sentence, the Secretary may pay all of the costs of any such project which is (A) an emergency or disaster project, or (B) a project located in an economically depressed area, as determined by the Secretary in consultation with the Secretary of Commerce and the Director of the Community Services Administration.

(2) The non-Federal share of any project under this part may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to services and facilities contributed from non-Federal sources.

(d) Payments under this part may be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.

ADMINISTRATION

SEC. 612. [29 U.S.C. 795a] (a) In order to effectively carry out the provisions of this part, the Secretary shall, through the Commissioner of the Rehalibitation[76] Services Administration, consult with any designated State unit with regard to—

(1) the localities in which community service projects of the type authorized by this part are most needed;

(2) the employment situations and types of skills possessed by eligible individuals in such localities; and

(3) potential projects suitable for funding in such localities.

(b) The Secretary shall coordinate the pilot program established under this part with the Job Training Partnership Act and the Community Services Block Grant Act[77]. Appropriations under this part may not be used to carry out any program under the Acts referred to in the preceding sentence.

(c) In carrying out this part, the Secretary may, with the consent of any other Federal, State, or local agency, use the services, equipment, personnel, and facilities of such agency with or without providing such agency with reimbursement and may use the services, equipment, and facilities of any other public or private entity on a similar basis.

(d) Within one hundred and eighty days after the effective date of this part, the Secretary shall issue and publish in the Federal Register such regulations as may be necessary to carry out this part.

(e) The Secretary shall not delegate any function of the Secretary under this part to any other department or agency of the Federal Government.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 613. [29 U.S.C. 795b] (a) Eligible individuals who are employed in any project funded under this part shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this part with a contractor who is, or whose employees are, under State law, exempted from operation of any State workmen's compensation law generally applicable to employees, unless the contractor shall undertake to provide for persons to be employed under such contract, through insurance by a recognized carrier or by self-insurance authorized by State law, workmen's compensation coverage equal to that provided by law for covered employment.

(c) No part of the wages, allowances, or reimbursement for transportation and attendant care costs made available to an eligible individual employed in any project funded under this part shall be treated as income or benefits for the purpose of any other program or provision of State or Federal law, unless the Secretary makes a case

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[76] As in original. Should be "Rehabilitation".

[77] P.L. 100-630, §207(a), struck out "programs authorized under the Emergency Jobs and Unemployment Assistance Act of 1974, the Job Training Partnership Act, the Community Services Act of 1974, and the Emergency Employment Act of 1971" and substituted "the Job Training Partnership Act and the Community Services Block Grant Act".

by case determination that disallowance of such income or benefits is inequitable or does not carry out the purposes of this title.

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[*Internal References.*—Social Security Act §§222(a), (b), and (d), 225(b), 508(a) and (b), 1136(f), 1615(a), (c), and (d), 1631(a), and 1915(c) cite the Rehabilitation Act of 1973. P.L. 89-73, §306(c) (Vol. II, p. 539), cites the Rehabilitation Act of 1973. Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), and 1612(b) (catchline) (SSI), have footnotes referring to P.L. 93-112.]

P.L. 93-113, Approved October 1, 1973 (87 Stat. 394)
Domestic Volunteer Service Act of 1973

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TITLE IV—ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

SEC. 401. [42 U.S.C. 5041] There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency in order to provide a focal point for volunteerism at the national, State, and local level. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. There shall also be in such agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such agency one Associate Director who shall be appointed by the President with the advice and consent of the Senate, and shall be compensated at the rate provided for level 5[1] of the Executive Schedule under section 5316 of title 5, United States Code. Such Associate Director shall be designated "Associate Director for Domestic and Anti-Poverty Operations" and shall carry out operational responsibility for all programs authorized under this Act. There shall also be in such agency two Assistant Directors, each of whom shall be appointed by the Director, and who shall report directly to the Associate Director for Domestic and Anti-Poverty Operations. One such Assistant Director shall be primarily responsible for VISTA and other antipoverty programs under title I of this Act, and one such Assistant Director shall be primarily responsible for the Older American Volunteer Programs under title II of this Act.

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SPECIAL LIMITATIONS

SEC. 404. [42 U.S.C. 5044] (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this Act is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible costs consistent with the effective operation of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

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[1] As in original. Probably should be "V".

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as the Director determines will further the purposes of this Act.

(f) Notwithstanding any other provision of law, the Director shall assign or delegate any substantial responsibility for carrying out programs under this Act only to persons appointed or employed pursuant to clauses (1) and (2) of section 402, and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5, United States Code, on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date.

(g)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

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[*Internal References.*—Social Security Act §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 93-113. P.L. 89-73, §203(b), (Vol. II, p. 538) cites the Domestic Volunteer Service Act of 1973.]

P.L. 93-134, Approved October 19, 1973 (87 Stat. 466)
Indian Tribal Judgment Funds Use or Distribution Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 1401] (a)[1] That, notwithstanding any other law, all use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the United States Claims Court in favor of any Indian tribe, band, group, pueblo, or community (hereinafter referred to as "Indian tribe"), together with any investment income[2] earned thereon, after payment of attorney fees and litigation expenses, shall be made pursuant to the provisions of this Act.

(b) Except as provided in the Act of September 22, 1961 (75 Stat. 584), amounts which the Secretary of the Interior has remaining after execution of either a plan under this Act, or another Act enacted heretofore or hereafter providing for the use or distribution of amounts awarded in satisfaction of a judgment in favor of an Indian tribe or tribes, together with any investment income earned thereon and after payment of attorney fees and litigation expenses, shall be held in trust by the Secretary for the tribe or tribes involved if the plan or Act does not otherwise provide for the use of such amounts.[3]

(c) This Act may be cited as the "Indian Tribal Judgment Funds Use or Distribution Act".[4]

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[1] P.L. 100-153, §4(1), inserted "(a)".
[2] P.L. 100-153, §4(2), struck out "interest" and substituted "investment income".
[3] P.L. 100-153, §4(3), added subsection (b).
[4] P.L. 100-153, §4(3), added subsection (c).

SEC. 6. [25 U.S.C. 1406] (a) The Secretary shall promulgate rules and regulations to implement this Act no later than the end of the one hundred and eighty-day period beginning on the date of enactment of this Act. Among other things, such rules and regulations shall provide for adequate notice to all entities and persons who may receive funds under any Indian judgment of all relevant procedures pursuant to this Act concerning any such judgment.

(b) No later than sixty days prior to the promulgation of such rules and regulations the Secretary shall publish the proposed rules and regulations in the Federal Register.

(c) No later than thirty days prior to the promulgation of such rules and regulations, the Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed rules and regulations, once published, to all interested parties.

SEC. 7. [25 U.S.C. 1407] None of the funds which—

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act, or

(2) on the date of enactment of this Act, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to the date of enactment of this Act, or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act, and any purchases made with such funds,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

SEC. 8. [25 U.S.C. 1408] Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 93-134.]

P.L. 93-233, Approved December 31, 1973 (87 Stat. 947)
[Social Security Benefits—Increase]

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Eligibility of Supplemental Security Income Recipients for Food Stamps

SEC. 8.

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(c) [42 U.S.C. 1382e note] For purposes of section 6(g) of the Food Stamp Act of 1977 and subsections (b)(3) and (f) of this section, the level of State supplementary payment under section 1616(a) shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 and which is such that the limitation on State fiscal liability under section 401 does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.

(d) [42 U.S.C. 1382e note] Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c), that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

(2) such State continues without interruption to meet the requirements of section 1618 of such Act for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.

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Medicaid Eligibility for Individuals Receiving Mandatory State Supplementary Payments

SEC. 13.

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(c) [42 U.S.C. 1396a note] In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare under section 212(a) of Public Law 93-66, and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a), and

(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.

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[*Internal References.*—Social Security Act §1926(a) cites P.L. 93-233. The catchlines to Social Security Act §1902 and P.L. 92-603, §401 (Vol. II, p. 615) have footnotes referring to P.L. 93-233.]

P.L. 93-247, Approved January 31, 1974 (88 Stat. 4)
Child Abuse Prevention and Treatment Act.[1]

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SEC. 8. [42 U.S.C. 5106a] **GRANTS TO STATES FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS.**

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(b) ELIGIBILITY REQUIREMENTS.—In order for a State to qualify for a grant under subsection (a), such State shall—

(1) have in effect a State law relating to child abuse and neglect, including—

(A) provisions for the reporting of known and suspected instances of child abuse and neglect; and

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(2) provide that upon receipt of a report of known or suspected instances of child abuse or neglect an investigation shall be initiated promptly to substantiate the accuracy of the report, and, upon a finding of abuse or neglect, immediate steps shall be taken to protect the health and welfare of the abused or neglected child and of any other child under the same care who may be in danger of abuse or neglect;

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[1] P.L. 100-294, §101, amended the Child Abuse Prevention and Treatment Act in its entirety.

(4) provide for methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;

(5) provide for the cooperation of law enforcement officials, courts of competent jurisdiction, and appropriate State agencies providing human services;

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(10) have in place for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for—

(A) coordination and consultation with individuals designated by and within appropriate health-care facilities;

(B) prompt notification by individuals designated by and within appropriate health-care facilities of cases of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(C) authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

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(e) RESTRICTIONS RELATING TO CHILD WELFARE SERVICES.—Programs or projects relating to child abuse and neglect assisted under part B of title IV of the Social Security Act shall comply with the requirements set forth in paragraphs (1)(A), (2), (4), (5), and (10) of subsection (b).

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[*Internal Reference.*—The catchline to Social Security Act title IV has a footnote referring to P.L. 93-247.]

P.L. 93-288, Approved May 22, 1974 (88 Stat. 143)
The Robert T. Stafford Disaster Relief and Emergency Assistance Act.[1]

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DEFINITIONS

SEC. 102. [42 U.S.C. 5122] As used in this Act—

(1) EMERGENCY.—"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.[2]

(2) MAJOR DISASTER.—"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.[3]

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa,[4] and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa,[5] or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

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[1] P.L. 100-707, §102(a), struck out "Disaster Relief Act of 1974" and substitued "The Robert T. Stafford Disaster Relief and Emergency Assistance Act.".
[2] P.L. 100-707, §103(b), amended paragraph (1) in its entirety.
[3] P.L. 100-707, §103(c), amended paragraph (2) in its entirety.
[4] P.L. 100-707, §104(d), struck out "the Canal Zone,".
[5] See footnote 4.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) PUBLIC FACILITY.—"Public facility" means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.[6]

(9) PRIVATE NONPROFIT FACILITY.—"Private nonprofit facility" means private nonprofit educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President.[7]

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SEC. 312. [42 U.S.C. 5155] DUPLICATION OF BENEFITS.[8]

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(d) ASSISTANCE NOT INCOME.—Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

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SEC. 408. [42 U.S.C. 5174] TEMPORARY HOUSING ASSISTANCE.

(a) PROVISION OF TEMPORARY HOUSING.—

(1) IN GENERAL.—The President may—

(A) provide, by purchase or lease, temporary housing (including unoccupied habitable dwellings), suitable rental housing, mobile homes, or other readily fabricated dwellings to persons who, as a result of a major disaster, require temporary housing; and

(B) reimburse State and local governments in accordance with paragraph (4) for the cost of sites provided under paragraph (2).

(2) MOBILE HOME SITE.—

(A) IN GENERAL.—Any mobile home or other readily fabricated dwelling provided under this section shall whenever possible be located on a site which—

(i) is provided by the State or local government; and

(ii) has utilities provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) OTHER SITES.—Mobile homes and other readily fabricated dwellings may be located on sites provided by the President if the President determines that such sites would be more economical or accessible than sites described in subparagraph (A).

(3) PERIOD.—Federal financial and operational assistance under this section shall continue for not longer than 18 months after the date of the major disaster declaration by the President, unless the President determines that due to extraordinary circumstances it would be in the public interest to extend such 18-month period.

(4) FEDERAL SHARE.—The Federal share of assistance under this section shall be 100 percent; except that the Federal share of assistance under this section for

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[6] P.L. 100-707, §103(f), added paragraph (8).
[7] P.L. 100-707, §103(f), added paragraph (9).
[8] P.L. 100-707, §105(i), added §312.

construction and site development costs (including installation of utilities) at a mobile home group site shall be 75 percent of the eligible cost of such assistance. The State or local government receiving assistance under this section shall pay any cost which is not paid for from the Federal share.

(b) TEMPORARY MORTGAGE AND RENTAL PAYMENTS.—The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of a foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for the duration of the period of financial hardship but not to exceed 18 months.

(c) IN LIEU EXPENDITURES.—In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition.

(d) TRANSFER OF TEMPORARY HOUSING.—

(1) DIRECT SALE TO OCCUPANTS.—Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) TRANSFERS TO STATES, LOCAL GOVERNMENTS, AND VOLUNTARY ORGANIZATIONS.—The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 308 requiring nondiscrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) and to the purposes of providing temporary housing for disaster victims in major disasters or emergencies.

(e) NOTIFICATION.—

(1) IN GENERAL.—Each person who applies for assistance under this section shall be notified regarding the type and amount of any assistance for which such person qualifies. Whenever practicable, such notice shall be provided within 7 days after the date of submission of such application.

(2) INFORMATION.—Notification under this subsection shall provide information regarding—

(A) all forms of such assistance available;

(B) any specific criteria which must be met to qualify for each type of assistance that is available;

(C) any limitations which apply to each type of assistance; and

(D) the address and telephone number of offices responsible for responding to—

(i) appeals of determinations of eligibility for assistance; and

(ii) requests for changes in the type or amount of assistance provided.

(f) LOCATION.—In providing assistance under this section, consideration shall be given to the location of and travel time to—

(1) the applicant's home and place of business;

(2) schools which the applicant or members of the applicant's family who reside with the applicant attend; and

(3) crops or livestock which the applicant tends in the course of any involvement in farming which provides 25 percent or more of the applicant's annual income.[9]

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UNEMPLOYMENT ASSISTANCE

SEC. 410[10]. [42 U.S.C. 5177] (a) The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit[11]. Such assistance as the President shall

[9] P.L. 100-707, §106(d), struck out §404 and substituted §408.
[10] P.L. 100-707, §106(e), redesignated §407 as §410.
[11] P.L. 100-707, §106(f)(1), inserted "for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of the Internal Revenue Code of 1986) or waiting period credit".

provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than 26 weeks[12] after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred[13]. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) REEMPLOYMENT ASSISTANCE.—

(1) STATE ASSISTANCE.—A State shall provide, without reimbursement from any funds provided under this Act, reemployment assistance services under any other law administered by the State to individuals receiving benefits under this section.

(2) FEDERAL ASSISTANCE.—The President may provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster and who reside in a State which does not provide such services.[14]

SEC. 411. [42 U.S.C. 5178] INDIVIDUAL AND FAMILY GRANT PROGRAMS.

(a) IN GENERAL.—The President is authorized to make a grant to a State for the purpose of making grants to individuals or families adversely affected by a major disaster for meeting disaster-related necessary expenses or serious needs of such individuals or families in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this Act or through other means.

(b) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of a grant to an individual or a family under this section shall be equal to 75 percent of the actual cost incurred.

(2) STATE CONTRIBUTION.—The Federal share of a grant under this section shall be paid only on condition that the remaining 25 percent of the cost is paid to an individual or family from funds made available by a State.

(c) REGULATIONS.—The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants under this section.

(d) ADMINISTRATIVE EXPENSES.—A State may expend not to exceed 5 percent of any grant made by the President to it under subsection (a) for expenses of administering grants to individuals and families under this section.

(e) ADMINISTRATION THROUGH GOVERNOR.—The Governor of a State shall administer the grant program authorized by this section in the State.

(f) LIMIT ON GRANTS TO INDIVIDUAL.—No individual or family shall receive grants under this section aggregating more than $10,000 with respect to any single major disaster. Such $10,000 limit shall annually be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.[15]

FOOD COUPONS AND DISTRIBUTION

SEC. 412[16]. [42 U.S.C. 5179] (a) Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048) and to make surplus commodities available pursuant to the provisions of this Act.

(b) The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 except as they relate to the availability of food stamps in an area affected by a major disaster.

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[12]P.L. 100-707, §106(f)(2), struck out "one year" and substituted "26 weeks".

[13]P.L. 100-707, §106(f)(3), struck out ", and the amount of assistance under this section to any such individual for a week of unemployment shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment".

[14]P.L. 100-707, §106(f)(4), amended subsection (b) in its entirety.

[15]P.L. 100-707, §106(g), struck out §408 and substituted §411.

[16]P.L. 100-707, §106(h), redesignated §§409 through 412 as §§412 through 415.

FOOD COMMODITIES

SEC. 413[17]. [42 U.S.C. 5180] (a) The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) The Secretary of Agriculture shall utilize funds appropriated under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

RELOCATION ASSISTANCE

SEC. 414[18]. [42 U.S.C. 5181] Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

LEGAL SERVICES

SEC. 415[19]. [42 U.S.C. 5182] Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this Act, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

CRISIS COUNSELING ASSISTANCE AND TRAINING

SEC. 416[20]. [42 U.S.C. 5183] The President is authorized[21] to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

COMMUNITY DISASTER LOANS

SEC. 417[22]. [42 U.S.C. 5184] (a) The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this Act.

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[*Internal References.*—Social Security Act §1612(a) and (b) cites the Disaster Relief and Emergency Assistance Act. Social Security Act §§1002(a), 1402(a), and 1602(a)(State), and the catchlines to §§1612(b), 1613(a), and title XVIII have footnotes referring to P.L. 93-288.]

P.L. 93-344, Approved July 12, 1974 (88 Stat. 297)
Congressional Budget and Impoundment Control Act of 1974

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[17]See footnote 16.
[18]See footnote 16.
[19]See footnote 16.
[20]P.L. 100-707, §106(i), redesignated §413 as §416.
[21]P.L. 100-707, §106(i), struck out "(through the National Institute of Mental Health)".
[22]P.L. 100-707, §106(j), redesignated §414 as §417.

SEC. 2. [2 U.S.C. 621] The Congress declares that it is essential—

(1) to assure effective congressional control over the budgetary process;

(2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

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SEC. 3. [2 U.S.C. 622] For purposes of this Act—

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(6) The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act (notwithstanding section 710(a) of the Social Security Act), for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth for each major functional category, for such fiscal year. Amounts paid by the Federal Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

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[*Internal Reference.*—Social Security Act §710(a) has a footnote referring to P.L. 93-344.]

P.L. 93-406, Approved September 2, 1974 (88 Stat. 829)
Employee Retirement Income Security Act of 1974

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SEC. 2. [29 U.S.C. 1001] * * *

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

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DEFINITIONS

SEC. 3. [29 U.S.C. 1002] For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness,

accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this Act providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this title, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

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(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.[1]

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and

[1] As in original. Probably should be a comma.

beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of the Internal Revenue Code of 1954 is permitted to make payments under section 4223 shall be treated as a party in interest with respect to such trust.

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SUBTITLE B—REGULATORY PROVISIONS

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REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. [29 U.S.C. 1025] (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

REPORTS MADE PUBLIC INFORMATION

SEC. 106. [29 U.S.C. 1026] (a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act.

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TITLE IV—PLAN TERMINATION INSURANCE

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SUBTITLE B—COVERAGE

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SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. [29 U.S.C. 1322] (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when section 4021 applies to it.

(b)(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 4021(a)) has been in effect includes the time a previously established plan (within the meaning of section 4021(a)) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

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[*Internal References.*—Social Security Act §§209(e) and 1106(c) cite the Employee Retirement Income Security Act of 1974 and §230(d) cites Public Law 93-406.]

P.L. 93-579, Approved December 31, 1974 (88 Stat. 1896)
Privacy Act of 1974

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SEC. 7. [5 U.S.C. 552a note] (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the[1] provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

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[*Internal Reference.*—Social Security Act §205(c) cites the Privacy Act of 1974.]

P.L. 93-618, Approved January 3, 1975 (88 Stat. 1978)
Trade Act of 1974

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CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

SUBCHAPTER A—PETITIONS AND DETERMINATIONS

PETITIONS

[1] As in original. Probably should be "The".

SEC. 221. [19 U.S.C. 2271] (a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

GROUP ELIGIBILITY REQUIREMENTS

SEC. 222. [19 U.S.C. 2272] (a)[1] The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) increases of imports of articles like or directly competitive with articles—

(A) which are produced by such workers' firm or appropriate subdivision thereof, or

(B) for which such workers' firm, or appropriate subdivision thereof, provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.[2]

(b) For purposes of subsection (a)(3)—

(1) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.[3]

DETERMINATIONS BY SECRETARY OF LABOR

SEC. 223. [19 U.S.C. 2273] (a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such

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[1] P.L. 100-418, §1421(a)(1)(A)(ii), inserted "(a)".

[2] P.L. 100-418, §1421(b)(1), amended paragraph (3) in its entirety.

P.L. 100-418, §1421(a)(1)(A)(i), struck out "For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important, but not necessarily more important than any other cause.".

[3] P.L. 100-418, §1421(a)(1)(A)(iii), added subsection (b).

termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION

SEC. 224. [19 U.S.C. 2274] (a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 202[4] with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f)[5]. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

BENEFIT INFORMATION TO WORKERS

SEC. 225. [19 U.S.C. 2275] (a)[6] The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.[7]

QUALIFYING REQUIREMENTS FOR WORKERS

SEC. 231. [19 U.S.C. 2291] (a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

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[4]P.L. 100-418, §1401(b)(1)(B)(i), struck out "201" and substituted "202".
[5]P.L. 100-418, §1401(b)(1)(B)(ii), struck out "201" and substituted "202(f)".
[6]P.L. 100-418, §1422(1), inserted "(a)".
[7]P.L. 100-418, §1422(2), added subsection (b).

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States, or

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A) is enrolled in a training program approved by the Secretary under section 236(a),

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement certified under subsection (c)(1) after the date described in subparagraph (B).[8]

(b)(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

(B) before the first week following the week in which such certification is made under subchapter (A).[9]

(c)(1)(A) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

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[8] P.L. 100-418, §1423(a)(1), amended paragraph (5) in its entirety.
[9] P.L. 100-418, §1423(a)(2), amended subsection (b) in its entirety.
As in original. Probably should be "A".

(B) If a State or State agency has an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

(i) submit to such worker a written statement certifying such finding, and

(ii) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

(2)(A) If, after submitting to a worker a written statement certified under paragraph (1)(A), the Secretary finds that it is feasible or appropriate to approve a training program for such worker under section 236(a), the Secretary shall submit to such worker a written statement that revokes the certification made under paragraph (1)(A) with respect to such worker.

(B) If, after submitting to a worker a written statement certified under paragraph (1)(B), a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker, and to the Secretary, a written statement that revokes the certification made under paragraph (1)(B) with respect to such worker.

(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under paragraph (1) during the preceding year and the number of certifications made under paragraph (1) that were revoked during the preceding year.[10]

WEEKLY AMOUNTS

SEC. 232. [19 U.S.C. 2292] (a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary[11] shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification[12]) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

SEC. 233. [19 U.S.C. 2293](a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the

[10] P.L. 100-418, §1423(a)(3), amended subsection (c) in its entirety.
[11] P.L. 100-418, §1423(b)(1), struck out ", including on-the-job training,".
[12] P.L. 100-418, §1423(b)(2), struck out "under section 231(c) or 236(c)".

total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).[13]

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins[14] after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is participating in such[15] training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 14 days if—

(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

(2) the break is provided under such training program.[16]

APPLICATION OF STATE LAWS

SEC. 234. [19 U.S.C. 2294] Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

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[13] P.L. 100-418, §1425(a), amended paragraph (2) in its entirety.
[14] P.L. 100-418, §1423(c)(1), struck out "is approved" and substituted "begins".
[15] P.L. 100-418, §1423(c)(2), struck out "engaged in such training and has not been determined under section 236(c) to be failing to make satisfactory progress in the" and substituted "participating in such".
[16] P.L. 100-418, §1423(c)(3), added subsection (f).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

EMPLOYMENT SERVICES

SEC. 235. [19 U.S.C. 2295] The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with the States[17].

TRAINING

SEC. 236. [19 U.S.C. 2296] (a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably[18] available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers)[19]

(E) the worker is qualified to undertake and complete such training, and[20]

(F) such training is suitable for the worker and available at a reasonable cost,[21]

the Secretary shall[22] approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section)[23] paid on his behalf by the Secretary directly or through a voucher system[24]. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $120,000,000[25].

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation imposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.[26]

(3)[27] For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)[28](A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5)[29] The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

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[17]P.L. 100-418, §1424(d)(1)(A), struck out "cooperating State agencies" and substituted "the States".
[18]P.L. 100-418, §1424(a)(1), inserted "reasonably".
[19]P.L. 100-418, §1424(a)(2), struck out "; and".
[20]P.L. 100-418, §1424(a)(3), added "and".
[21]P.L. 100-418, §1424(a)(4), added subparagraph (F).
[22]P.L. 100-418, §1424(a)(5), struck out "(to the extent appropriated funds are available)".
[23]P.L. 100-418, §1424(a)(6), inserted "(subject to the limitations imposed by this section)".
[24]P.L. 100-418, §1424(a)(7), inserted "directly or through a voucher system".
[25]P.L. 100-418, §1424(b), struck out "$80,000,000" and substituted "$120,000,000".
[26]P.L. 100-418, §1424(a)(12), added this paragraph (2).
[27]P.L. 100-418, §1424(a)(11), redesignated paragraph (2) as paragraph (3).
[28]P.L. 100-418, §1424(a)(11), redesignated paragraph (3) as paragraph (4).
[29]P.L. 100-418, §1424(a)(11), redesignated paragraph (4) as paragraph (5).

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act,[30]

(D) any program of remedial education,[31]

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section, and[32]

(F)[33] any other training program approved by the Secretary.

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A)[34].[35]

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.[36]

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.[37]

(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).[38]

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations.

(c) Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary shall not thereafter be entitled to payments under this chapter until he enters or resumes the training to which he has been so referred.

(d) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section,[39] only if—

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[30] P.L. 100-418, §1424(a)(8), struck out "and".

[31] P.L. 100-418, §1424(a)(10), added this subparagraph (D).

[32] P.L. 100-418, §1424(a)(10), added subparagraph (E).

[33] P.L. 100-418, §1424(a)(9), redesignated subparagraph (D) as subparagraph (F).

[34] P.L. 100-647, §9001(a)(20), struck out "subparagraph (A) or (B) of paragraph (1)" and substituted "clause (i) or (ii) of subparagraph (A)".

[35] P.L. 100-418, §1424(a)(13), added paragraph (6).

[36] P.L. 100-418, §1424(a)(13), added paragraph (7).

[37] P.L. 100-418, §1424(a)(13), added paragraph (8).

[38] P.L. 100-418, §1424(a)(13), added paragraph (9).

[39] P.L. 100-418, §1424(c), struck out "Notwithstanding any provision of subsection (a)(1), the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1)" and substituted "The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section,".

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(e) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under subsection (a) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(f) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

JOB SEARCH ALLOWANCES

SEC. 237. [19 U.S.C. 2297] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

RELOCATION ALLOWANCES

SEC. 238. [19 U.S.C. 2298] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certification, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b)(1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family, if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

SUBCHAPTER C—GENERAL PROVISIONS

AGREEMENTS WITH STATES

SEC. 239. [19 U.S.C. 2311] (a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating State agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 231(c)(2), and[40] (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established

[40] P.L. 100-418, §1423(a)(4), amended paragraph (3) in its entirety.

by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.[41]

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.[42]

ADMINISTRATION ABSENT STATE AGREEMENT

SEC. 240. [19 U.S.C. 2312] (a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. sec. 405(g)).

PAYMENTS TO STATES

SEC. 241. [19 U.S.C. 2313] (a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS

SEC. 242. [19 U.S.C. 2314] (a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

FRAUD AND RECOVERY OF OVERPAYMENTS

SEC. 243. [19 U.S.C. 2315] (a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

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[41] P.L. 100-418, §1424(d)(1)(B), amended subsection (e) in its entirety.
[42] P.L. 100-418, §1424(d)(2), amended subsection (f) in its entirety.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

PENALTIES

SEC. 244. [19 U.S.C. 2316] Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

AUTHORIZATION OF APPROPRIATIONS

SEC. 245. [19 U.S.C. 2317] There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993[43], such sums as may be necessary to carry out the purposes of this chapter.

SEC. 246. [19 U.S.C. 2318] **SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.**[44]

(a) The Secretary shall establish and carry out one or more demonstration projects during fiscal years 1989 and 1990 for the purpose of—

(1) determining the attractiveness of a supplemental wage allowance to various categories of workers eligible for assistance under this chapter, based on the amount and duration of the supplement;

(2) determining the effectiveness of a supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers; and

(3) determining whether a supplemental wage allowance should be made an option under the Trade Adjustment Assistance program for all fiscal years.

(b)(1) For purposes of this section, the term "supplemental wage allowance" means a payment that is made to an adversely affected worker who—

(A) accepts full-time employment at an average weekly wage that is less than the average weekly wage of the worker in the adversely affected employment,

(B) prior to such acceptance, is eligible for trade readjustment allowances under part I of subchapter B, and

(C) voluntarily elects to receive such payment in lieu of any trade readjustment allowances that the worker would otherwise be eligible to receive with respect to the period covered by the certification made under subchapter A that applies to such worker.

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[43] P.L. 100-418, §1426(b)(1), struck out "1986, 1987, 1988, 1989, 1990, and 1991" and substituted "1988, 1989, 1990, 1991, 1992, and 1993".

[44] P.L. 100-418, §1423(d)(1), added §246.

(2) A supplemental wage allowance shall be provided under any demonstration project established under subsection (a) to a worker described in paragraph (1) for each week during which the worker described in paragraph (1) for each week during which the worker performs services in the full-time employment referred to in paragraph (1)(A) in an amount that does not exceed the lesser of—

(A) the amount of the trade readjustment allowance that the worker would have been eligible to receive for any week under part 1[45] of subchapter B if the worker had not accepted the full-time employment and had not made the election described in paragraph (1)(C), or

(B) the excess of—

(i) an amount equal to 80 percent of the average weekly wage of the worker in the adversely affected employment, over

(ii) the average weekly wage in the full-time employment.

(3)(A) Supplemental wage allowances shall not be provided under any demonstration project established under subsection (a) for more than 52 weeks.

(B) The total amount of supplemental wage allowances that may be paid to any worker under any demonstration project established under subsection (a) with respect to the period covered by the certification applicable to such worker shall not exceed an amount that is equal to the excess of—

(i) the amount of the limitation imposed under section 233(a)(1) with respect to such worker for such period, over

(ii) the amount of the trade readjustment allowances paid under part I of subchapter B to such worker for such period.

(c) The Secretary shall provide for an evaluation of demonstration projects conducted under this section to determine at least the following:

(1) the extent to which different age groups of eligible recipients utilize the supplemental wage allowance;

(2) the effect of the amount and duration of the supplemental wage allowance on the utilization of the allowance;

(3) the extent to which the supplemental wage allowance affects the demand for training and the appropriateness thereof;

(4) the extent to which the supplemental wage allowance facilitates the readjustment of workers who would not otherwise utilize benefits provided under this chapter;

(5) the extent to which the allowance affects the cost of carrying out the provisions of this chapter; and

(6) the effectiveness of the supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers.

(d) By no later than the date that is 3 years after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, the Secretary shall transmit to the Congress a report that includes—

(1) an evaluation of the projects authorized under this section that is conducted in accordance with subsection (c), and

(2) a recommendation as to whether the supplemental wage allowance should be available on a permanent basis as an option for some or all workers eligible for assistance under this chapter.

DEFINITIONS

SEC. 247. [19 U.S.C. 2319] For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.[46]]

(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or,

[45] As in original. Probably should be "I".
[46] P.L. 97-35, §2511(1), 95 Stat. 888.

in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

[(7) Repealed.[47]]

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

REGULATIONS

SEC. 248. [19 U.S.C. 2320] The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

SUBPENA POWER

SEC. 249. [19 U.S.C. 2321] (a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

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[47] P.L. 97-35, §2511(1), 95 Stat. 888.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

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[*Internal Reference.*—Social Security Act title IX has a footnote referring to P.L. 93-618.]

P.L. 93-638, Approved January 4, 1975 (88 Stat. 2203)
Indian Self-Determination and Education Assistance Act

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TITLE I—INDIAN SELF-DETERMINATION ACT

SEC. 101. [25 U.S.C. 450 note] This title may be cited as the "Indian Self-Determination Act".

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SEC. 104[1].

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(e) [25 U.S.C. 450i(a)] Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5, United States Code[2], executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203)[3], in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

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(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") or chapter 84 ("Federal Employees Retirement System")[4] of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

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[*Internal References.*—Social Security Act §§210(a) and 1920(b) cite the Indian Self-Determination Act. Social Security Act §482(i) cites Public Law 93-638.]

P.L. 94-114, Approved October 17, 1975 (89 Stat. 577)
[Indian Tribes—Submarginal Lands]

[25 U.S.C 459] That (a) except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now

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[1]P.L. 100-472, §203(a), redesignated §105 as §104.
[2]P.L. 100-472, §203(e), struck out "any other law" in paragraph (2) of subsection (e) and substituted "the provisions of sections 8347(o), 8713, and 8914 of title 5, United States Code". Executed as if this amendment reads "in subsection (e)".
[3]P.L. 100-472, §203(d), struck out "on or before December 31, 1988".
[4]P.L. 100-472, §203(e)(1), inserted "or chapter 84 ('Federal Employees Retirement System')".

thereon, that was acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 2(a) of this Act, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

(b) The property conveyed by this Act shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by the Act of August 8, 1968 (82 Stat. 663), and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this Act shall not convey the title to any part of the lands or any interest therein that prior to enactment of this Act have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such lands included in Missouri River Basin projects shall be treated as former trust lands are treated.

(c) The right, title, and interest of the United States of America in all of the lands, including the improvements now thereon (title to which is in the United States), acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriation Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617), together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, and which lands are now administered by the Secretary of the Interior for the use or benefit of (1) Ramah Navajo Indians, are hereby declared to be held in trust for the Ramah Band of the Navajo Tribe, and (2) Choctaw Indians of Mississippi, except lands subject to the Act of June 21, 1939 (53 Stat. 851), are hereby declared to be held in trust for the Mississippi Band of Choctaw Indians; excepting valid rights-of-way of record.

SEC. 2. [25 U.S.C. 459a] (a) The lands, declared by section 1(a) of this Act to be held in trust by the United States for the benefit of the Indian tribes named in this section, are generally described as follows:

Tribe	* * *
1. Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.	* * *
2. Blackfeet Tribe.	* * *
3. Cherokee Nation of Oklahoma.	* * *
4. Cheyenne River Sioux Tribe.	* * *
5. Crow Creek Sioux Tribe.	* * *
6. Lower Brule Sioux Tribe.	* * *
7. Devils Lake Sioux Tribe.	* * *
8. Fort Belknap Indian Community.	* * *
9. Assiniboine and Sioux Tribes.	* * *
10. Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	* * *
11. Keweenaw Bay Indian Community.	* * *
12. Minnesota Chippewa Tribe.	* * *
13. Navajo Tribe.	* * *
14. Ogala Sioux Tribe.	* * *
15. Rosebud Sioux Tribe.	* * *
16. Shoshone-Bannock Tribes.	* * *
17. Standing Rock Sioux Tribe.	* * *

(b) The Secretary of the Interior shall cause to be published in the Federal Register the boundaries and descriptions of the lands conveyed by this Act. The acreages set out in the preceding subsection are estimates and shall not be construed as expanding or limiting the grant of the United States as defined in section 1 of this Act.

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SEC. 5. [25 U.S.C. 459d] (a) Any and all gross receipts derived from, or which relate to, the property conveyed by this Act, the Act of July 20, 1956 (70 Stat. 581), the Act of

August 2, 1956 (70 Stat. 941), the Act of October 9, 1972 (86 Stat. 795), and section 1 of the Act of October 13, 1972 (86 Stat. 806) which were received by the United States subsequent to its acquisition by the United States under the statutes cited in section 1 of this Act and prior to such conveyance, from whatever source and for whatever purpose, including but not limited to the receipts in the special fund of the Treasury as required by section 6 of the Mineral Leasing Act for Acquired Lands of August 7, 1947 (61 Stat. 913, 915), shall as of the date of enactment of this Act be deposited to the credit of the Indian tribe receiving such land and may be expended by the tribe for such beneficial programs as the tribal governing body may determine: *Provided*, That this section shall not apply to any such receipts received prior to enactment of this Act from the leasing of public domain minerals which were subject to the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and supplemented.

(b) All gross receipts (including but not limited to bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit or lease referred to in section 4(a) of this Act, or otherwise, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. [25 U.S.C. 459e] All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—Social Security Act §§402(a); 1002(a); 1402(a); 1602(a)(State); 1612(b); and 1613(a) have footnotes referring to P.L. 94-114.]

P.L. 94-135, Approved November 28, 1975 (89 Stat. 713)
Older Americans Amendments of 1975

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TITLE III—PROHIBITION OF DISCRIMINATION BASED ON AGE

SHORT TITLE

SEC. 301. [42 U.S.C. 6101 note] The provisions of this title may be cited as the "Age Discrimination Act of 1975".

STATEMENT OF PURPOSE

SEC. 302. [42 U.S.C. 6101] It is the purpose of this title to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

PROHIBITION OF DISCRIMINATION

SEC. 303. [42 U.S.C. 6102] Pursuant to regulations prescribed under section 304, and except as provided by section 304(b) and section 304(c), no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

REGULATIONS

SEC. 304. [42 U.S.C. 6103] * * *

(b)(1) It shall not be a violation of any provision of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c)(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974[1] (29 U.S.C. 801, et seq.), as amended, nothing in this title shall be construed to authorize action under this title by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this title shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

ENFORCEMENT

SEC. 305. [42 U.S.C. 6104] (a) The head of any Federal department or agency who prescribes regulations under section 304 may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1). Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 304 withholds funds pursuant to subsection (a), he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 304.

(c) No action may be taken under subsection (a) until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) In the case of any action taken under subsection (a), the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e)(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education, and Welfare, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

[1] P.L. 97-300, §183, deemed this reference to be to the Job Training Partnership Act.

(f) With respect to actions brought for relief based on an alleged violation of the provisions of this title, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

JUDICIAL REVIEW

SEC. 306. [42 U.S.C. 6105] (a) Any action by any Federal department or agency under section 305 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) In the case of any action by any Federal department or agency under section 305 which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5, United States Code. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

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REPORTS

SEC. 308. [42 U.S.C. 6106a] (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

DEFINITIONS

SEC. 309. [42 U.S.C. 6107] For purposes of this title—

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health, Education, and Welfare;[2]

(3) the term "Federal department or agency" means any agency as defined in section 551 of title 5, United States Code, and includes the United States Postal Service and the Postal Rate Commission; and[3]

(4) the term "program or activity" means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 198(a)(10), of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

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[2] P.L. 100-259, §5(1), struck out "and".
[3] P.L. 100-259, §5(2), struck out the period and substituted "; and".

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.[4]

[*Internal Reference.*—Social Security Act §508(a) and (b) cites the Age Discrimination Act of 1975 (Title III of P.L. 94-135).]

P.L. 94-202, Approved January 2, 1976 (89 Stat. 1135)
[Social Security—Hearings and Review Procedures]

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SEC. 8.

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(e) [42 U.S.C. 401 note] Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(f) [42 U.S.C. 401 note] The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare specified in section 232 of such Act, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

* * * * * * *

(k) [42 U.S.C. 418 note] Notwithstanding the provisions of section 218(i) of the Social Security Act, nothing contained in the amendments made by the preceding provisions of this section shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act.

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[*Internal Reference.*—Social Security Act §201(g) has a footnote referring to P.L. 94-202.]

P.L. 94-375, Approved August 3, 1976 (90 Stat. 1067)
Housing Authorization Act of 1976

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SEC. 2.

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[4] P.L. 100-259, §5(3), added paragraph (4).

(h) [42 U.S.C. 1382 note] Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949 may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act. This subsection shall become effective on October 1, 1976.

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[*Internal References.*—Social Security Act §§1612(b) and 1613(a), and P.L. 73-479, P.L. 81-171, and P.L. 89-117 have footnotes referring to P.L. 94-375.]

P.L. 94-437, Approved September 30, 1976 (90 Stat. 1400)
Indian Health Care Improvement Act

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DEFINITIONS

SEC. 4. [25 U.S.C. 1603] For purposes of this Act—

(a) "Secretary", unless otherwise designated, means the Secretary of Health and Human Services.

(b) "Service" means the Indian Health Service.

(c) "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 102, 103, and 201(c)(5), such terms shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(d) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) "Tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(f) "Urban Indian" means any individual who resides in an urban center, as defined in subsection (g) hereof, and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.

(g) "Urban center" means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under title V, as determined by the Secretary.

(h) "Urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an urban[1] Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

(i) "Area office" means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.[2]

(j) "Service unit" means—

(1) an administrative entity within the Indian Health Service, or

(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act,

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[1] P.L. 100-713, §502, inserted "urban".
[2] P.L. 100-713, §201(b), amended subsection (i) in its entirety.

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.[3]

(k) "Health promotion" includes—

(1) cessation of tobacco smoking,
(2) reduction in the misuse of alcohol and drugs,
(3) improvement of nutrition,
(4) improvement in physical fitness,
(5) family planning,
(6) control of stress, and
(7) pregnancy and infant care (including prevention of fetal alcohol syndrome).[4]

(l) "Disease prevention" includes—

(1) immunizations,
(2) control of high blood pressure,
(3) control of sexually transmittable diseases,
(4) prevention and control of diabetes,
(5) control of toxic agents,
(6) occupational safety and health,
(7) accident prevention,
(8) fluoridation of water, and
(9) control of infectious agents.[5]

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INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM[6]

SEC. 108. [25 U.S.C. 1616a]

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(l)(1) An individual who has entered into a written contract with the Secretary under this section and who—

(A) is enrolled in the final year of a course of study and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A = 3Z(t\text{-}s/t)$$

in which—

(A) "A" is the amount the United States is entitled to recover;

(B) "Z" is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) "t" is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

(D) "s" is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

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[3] P.L. 100-713, §201(b), amended subsection (j) in its entirety.
[4] P.L. 100-713, §201(b), struck out the former subsection (k).
P.L. 100-713, §203(b), added this subsection (k).
[5] P.L. 100-713, §203(b), added subsection (l).
[6] P.L. 100-713, §108, added §108.

SEC. 401. * * *

(c) [42 U.S.C. 1395qq note] Any payments received for services provided to beneficiaries hereunder shall not be considered in determining appropriations for health care and services to Indians.

(d) [42 U.S.C. 1395qq note] Nothing herein authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

SEC. 402.

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[(b) Repealed.[7]]

(c) [42 U.S.C. 1396j note] Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under a State plan for medical assistance approved under title XIX of the Social Security Act[8]) is entitled under such a State plan[9] by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of title XIX of the Social Security Act.[10] This subsection[11] shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) [42 U.S.C. 1396j note] Any payments received for services provided recipients hereunder shall not be considered in determining appropriations for the provision of health care and services to Indians.

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REPORT

SEC. 403. [25 U.S.C. 1671 note] The Secretary shall include in his annual report required by section 701 an accounting on the amount and use of funds made available to the Service pursuant to this title as a result of reimbursements through titles XVIII and XIX of the Social Security Act, as amended.

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DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS[12]

SEC. 405. [42 U.S.C. 1395qq] (a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The last sentence of section 1905(b) of the Social Security Act shall apply for purposes of the demonstration program.

(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) shall be reimbursed directly under the medicare and medicaid

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[7] P.L. 100-713, §401(b), repealed subsection (b).

[8] P.L. 100-713, §401(a)(1), struck out "or skilled nursing facility" and substituted "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under a State plan for medical assistance approved under title XIX of the Social Security Act".

[9] P.L. 100-713, §401(a)(2), struck out "a State plan approved under title XIX of the Social Security Act" and substituted "such a State plan".

[10] P.L. 100-713, §401(a)(3), added this sentence.

[11] P.L. 100-713, §401(a)(3), struck out "The preceding sentence" and substituted "This subsection".

[12] P.L. 100-713, §402, added §405.

programs for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act and sections 402(c) and 713(b)(2)(A) of this Act, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

(A) solely for improving the health resources deficiency level of the Indian tribe, and

(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act.

(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a), and shall require such hospitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

(4) Notwithstanding section 1880(c) of the Social Security Act or section 402(c) of this Act, no payment may be made out of the special fund described in section 1880(c) of the Social Security Act, or section 402(c) of this Act, for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) during the period of such participation.

(c)(1) In order to be considered for participation in the demonstration program described in subsection (a), a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts the entire operation of the Service facility;

(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

(C) the facility meets any requirements which apply to programs operated directly by the Service; and

(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1990.

(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1989, select no more than 4 facilities to participate in the demonstration program described in subsection (a). The demonstration program described in subsection (a) shall begin by no later than October 1, 1991, and end on September 30, 1995.

(d)(1) Upon the enactment of the Indian Health Care Amendments of 1988, the Secretary, acting through the Service, shall commence an examination of—

(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a), including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

(2) Prior to the commencement of the demonstration program described in subsection (a), the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

(3) Prior to October 1, 1990, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) would be required to report.

(e) The Secretary shall submit a final report at the end of fiscal year 1995, on the activities carried out under the demonstration program described in subsection (a) which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) and

the Service under the authority of the Indian Self-Determination Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.

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TITLE V—HEALTH SERVICES FOR URBAN INDIANS[13]

PURPOSE

SEC. 501. [25 U.S.C. 1651] The purpose of this title is to establish programs in urban centers to make health services more accessible to urban Indians.

CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

SEC. 502. [25 U.S.C. 1652] Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this title. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

CONTRACTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES

SEC. 503. [25 U.S.C. 1653] (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

(1) estimate the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

(2) estimate the current health status of urban Indians residing in such urban center;

(3) estimate the current health care needs of urban Indians residing in such urban center;

(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

(6) assist such health services resources in providing services to urban Indians;

(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

(9) establish and implement training programs to accomplish the referral and education tasks set forth in paragraphs (6) through (8) of this subsection;

(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

(1) the extent of unmet health care needs of urban Indians in the urban center involved;

(2) the size of the urban Indian population in the urban center involved;

(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

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[13]P.L. 100-713, §501, amended title V (§§501-508) in its entirety.

(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

(B) any project funded under this title;

(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

SEC. 504. [25 U.S.C. 1654] (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

(b) Any contract entered into by the Secretary under this section shall include requirements that—

(1) the urban Indian organization successfully undertake to—

(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

(c) The Secretary may not renew any contract entered into under this section.

EVALUATIONS; CONTRACT RENEWALS

SEC. 505. [25 U.S.C. 1655] (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

(d) In determining whether to renew a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the onsite evaluations conducted under subsection (b).

OTHER CONTRACT REQUIREMENTS

SEC. 506. [25 U.S.C. 1656] (a) Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

(d) In connection with any contract entered into purusuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

(f) Urban Indians, as defined in section 4(f) of this Act, shall be eligible for health care or referral services provided pursuant to this title.

REPORTS AND RECORDS

SEC. 507. [25 U.S.C. 1657] (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into pursuant to this title, such organization shall submit to the Secretary a quarterly report including—

(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

(2) information on activities conducted by the organization pursuant to the contract;

(3) an accounting of the amounts and purposes for which Federal funds were expended; and

(4) such other information as the Secretary may request.

(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

LIMITATION ON CONTRACT AUTHORITY

SEC. 508. [25 U.S.C. 1658] The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

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REPORTS

SEC. 701. [25 U.S.C. 1671] The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this Act.

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REGULATIONS

SEC. 702. [25 U.S.C. 1672]

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(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to this Act: *Provided*, That, prior to any revision of or amendment to such rules or regulations, the Secretary shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish

any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.

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LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE[14]

SEC. 706. [25 U.S.C. 1676] Any limitation on the use of funds contained in an Act providing appropriations for the Department of Health and Human Services for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Indian Health Service.

* * * * * * *

HEALTH SERVICES FOR INELIGIBLE PERSONS[15]

SEC. 713. [25 U.S.C. 1680c] (a)(1) Any individual who—

(A) has not attained 19 years of age,

(B) is the natural or adopted child, step-child, foster-child, legal ward, or orphan of an eligible Indian, and

(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

(b)(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination Act, the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) of the Social Security Act, section 402(c) of

[14] P.L. 100-713, §718, amended §706 in its entirety.
[15] P.L. 100-713, §707(a), added §713.

this Act, or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Amounts collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

(3)(A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provision of such health services.

(c) The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to—

(1) achieve stability in a medical emergency,

(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,

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[*Internal References.*— Social Security Act §§1880(a) and (d), 1905(b), 1911(a), and 1920(b) cite the Indian Health Care Improvement Act. Social Security Act §§1880(c) and 1901 and the catchlines to §§205, 1102, title XVIII, 1861, 1871, 1880, 1892, and 1911 have footnotes referring to P.L. 94-437.]

P.L. 94-566, Approved October 20, 1976 (90 Stat. 2667)
Unemployment Compensation Amendments of 1976

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SEC. 116. * * *

(g) [26 U.S.C. 3304 note] TRANSFER OF FUNDS.—The Secretary of Labor shall not approve an unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954 until the Governor of the Virgin Islands has approved the transfer to the Federal Unemployment Trust Fund established by section 904 of the Social Security Act of an amount equal to the dollar balance credited to the unemployment subfund of the Virgin Islands established under section 310 of title 24 of the Virgin Islands Code.

PART II—TRANSITIONAL PROVISIONS

FEDERAL REIMBURSEMENT FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING TRANSITION PERIOD

SEC. 121. [26 U.S.C. 3304 note] (a) GENERAL RULE.—If any State, the unemployment compensation law of which is approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1954, provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1978, on the basis of previously uncovered services, the Secretary shall pay to the unemployment fund of such State an amount equal to the Federal reimbursement for any compensation paid for a week of unemployment beginning on or after January 1, 1978, to any individual whose base period wages include wages for previously uncovered services.

(b) PREVIOUSLY UNCOVERED SERVICES.—For purposes of this section, the term "previously uncovered services" means, with respect to any State, services—

(1) which were not covered by the State unemployment compensation law, at any time, during the 1-year period ending December 31, 1975; and

(2) which—

(A) are agricultural labor (as defined in section 3306(k) of the Internal Revenue Code of 1954) or domestic services referred to in section 3306(c)(2) of such Code (as in effect on the day before the date of the enactment of this Act) and are treated as employment (as defined in section 3306(c) of such Code) by reason of the amendments made by this Act, or

(B) are services to which section 3309(a)(1) of such Code applies by reason of the amendments made by this Act.

(c) FEDERAL REIMBURSEMENT.—

(1) IN GENERAL.—For purposes of this section, the Federal reimbursement for compensation paid to any individual for any week of unemployment shall be an amount which bears the same ratio to the amount of such compensation as the amount of the individual's base period wages which are attributable to previously uncovered services which are reimbursable bears to the total amount of the individual's base period wages.

(2) REIMBURSABLE SERVICES.—For purposes of determining the amount of the Federal reimbursement for compensation paid to any individual for any week of unemployment, previously uncovered services shall be treated as being reimbursable—

(A) if such services were performed—

(i) before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978; or

(ii) before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978; and

(B) to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was not paid to such individual on the basis of such services.

(3) DENIAL OF PAYMENT.—No payment may be made under subsection (a) to any State in respect of any compensation for which the State is entitled to any reimbursement under the provisions of any Federal law other than this Act or the Federal-State Extended Unemployment Compensation Act of 1970.

(d) EXPERIENCE RATING OF CERTAIN EMPLOYERS.—The unemployment compensation law of any State may, without being deemed to violate the standards set forth in section 3303(a) of the Internal Revenue Code of 1954, provide that the experience-rating account of any employer shall not be charged for the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State law not provided for the payment of compensation on the basis of such previously uncovered services.

(e) CERTAIN NONPROFIT EMPLOYERS.—The unemployment compensation law of any State may provide that any organization which elects to make payments (in lieu of contributions) into the State unemployment compensation fund as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 shall not be liable to make such payments with respect to the compensation paid to any individual whose base period wages includes wages for previously uncovered services which are reimbursable under subsection (c)(2) to the extent that such individual would not have been eligible to receive such compensation had the State not provided for the payment of compensation on the basis of such previously uncovered services.

(f) PAYMENTS MADE MONTHLY.—Payments under subsection (a) shall be made monthly, prior to audit or settlement by the General Accounting Office, on the basis of estimates by the Secretary of the amount payable to such State for such month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior month were greater or less than the amounts which should have been paid to such State. Such estimates may be made on the basis of such statistical, sampling, or other methods as may be agreed upon by the Secretary and the State.

(g) DEFINITIONS.—For purposes of this section—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(3) BENEFIT YEAR.—The term "benefit year" means the benefit year as defined in the applicable State unemployment compensation law.

(4) BASE PERIOD.—The term "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(5) UNEMPLOYMENT FUND.—The term "unemployment fund" has the meaning given to such term by section 3306(f) of the Internal Revenue Code of 1954.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the general fund of the Treasury such sums as may be necessary to carry out the purposes of this section.

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PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

SEC. 503. [42 U.S.C. 1396a note] In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act but is not eligible for benefits under title XVI of such Act, in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act which have occurred pursuant to section 215(i) of such Act, in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II, and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act or of the type described in section 212(a) of Public Law 93-66 shall be deemed to be benefits under title XVI of the Social Security Act.

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SEC. 508. • • •

(b) [42 U.S.C. 603a] PROVISION FOR REIMBURSEMENT OF EXPENSES.—For purposes of section 403 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a), by a State or local agency administering a State plan approved under part A of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan.

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MODIFICATION OF AGREEMENTS

SEC. 604. [26 U.S.C. 3304 note] The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act, propose to each State with which he has in effect an agreement under section 202 of the Emergency Jobs and Unemployment Assistance Act of 1974 a modification of such agreement designed to provide for the payment of special unemployment assistance under such Act in accordance with the amendments made by sections 601, 602, and 603 of this title. Notwithstanding any other provision of law, if any State fails or refuses, within the three-week period beginning on the date the Secretary of Labor proposes such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such three-week period.

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[*Internal References.*—Social Security Act §454(19) cites the Unemployment Compensation Amendments of 1976 and §1926(a) cites P.L. 94-566. Social Security Act §403(a) and the catchlines to Social Security Act titles II and XIX; title IV, Part A (at §401); §§403 and 1634 and P.L. 93-66, §212(a) have footnotes referring to P.L. 94-566.]

P.L. 94-581, Approved October 21, 1976 (90 Stat. 2842)
Veterans Omnibus Health Care Act of 1976

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SEC. 115.

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(c) [38 U.S.C. 5053 note] At such time as the rates and procedures described in section 5053(d) of title 38, United States Code, are prescribed, the Secretary of Health, Education, and Welfare;[1] in consultation with the Administrator of Veterans' Affairs, shall submit to the Committee on Ways and Means and the Committee on Veterans' Affairs of the House of Representatives and to the Committee on Finance and the Committee on Veterans' Affairs of the Senate a full report describing such rates and procedures (and any such additional matters relating to the formulation of such rates and procedures as the Secretary may consider pertinent).[2]

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[*Internal Reference.*—Social Security Act §1862(b) has a footnote referring to P.L. 94-581.]

P.L. 95-30, Approved May 23, 1977 (91 Stat. 126)
Tax Reduction and Simplification Act of 1977

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AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE WORK INCENTIVE PROGRAM

SEC. 401. (a) [42 U.S.C. 602 note] MATCHING FUNDS DISREGARDED.—The Secretary of Health, Education, and Welfare and the Secretary of Labor are authorized to carry out the work incentive program under title IV of the Social Security Act from the sums appropriated pursuant to this Act without regard to the requirements for non-Federal matching funds contained in sections 402(a)(19)(C), 402(a)(19)(G), 403(a)(3)(A), 403(d), and 435 of the Social Security Act.

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[*Internal Reference.*—Social Security Act, title IV, Part A (§401) has a footnote referring to P.L. 95-30.]

P.L. 95-142, Approved October 25, 1977 [91 Stat. 1175]
Medicare-Medicaid Anti-Fraud and Abuse Amendments

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SEC. 21. * * *

(b) [42 U.S.C. 1395x note] The Secretary of Health, Education, and Welfare[1] shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII, or under a State plan approved under the provisions of title XIX, of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.

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[1] As in original. Semicolon should be a comma, and reference should be to "Secretary of Health and Human Services".

[2] See 38 U.S.C. §5053(d), with respect to provision of hospital care or medical services to individuals entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act, in Vol. II, p. 221.

[1] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

[*Internal References.*—Social Security Act §§1819(f) and 1919(f) cite the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977.]

P.L. 95-202, Approved November 23, 1977 (91 Stat. 1433)
GI Bill Improvement Act of 1977

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TITLE IV—WOMEN'S AIR FORCES SERVICE PILOTS

SEC. 401. [38 U.S.C. 106 note] (a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II), or the service of any person in any other similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, shall be considered active duty for the purposes of all laws administered by the Veterans' Administration if the Secretary of Defense, pursuant to regulations which the Secretary shall prescribe—

(A) after a full review of the historical records and all other available evidence pertaining to the service of any such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group constituted active military service, and

(B) in the case of any such group with respect to which such Secretary has made an affirmative determination that the service of such group constituted active military service, issues to each member of such group a discharge from such service under honorable conditions where the nature and duration of the service of such member so warrants.

Discharges issued pursuant to the provisions of the first sentence of this paragraph shall designate as the date of discharge that date, as determined by the Secretary of Defense, on which such service by the person concerned was terminated.

(2) In making a determination under clause (A) of paragraph (1) of this subsection with respect to any group described in such paragraph, the Secretary of Defense may take into consideration the extent to which—

(A) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,

(B) the members of such group were subject to military justice, discipline, and control,

(C) the members of such group were permitted to resign,

(D) the members of such group were susceptible to assignment for duty in a combat zone, and

(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

(b)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title as a result of the enactment of subsection (a) of this section.

(2) The provisions of section 106(a)(2) of title 38, United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Veterans' Administration, as a result of implementation of the provisions of subsection (a) of this section.

(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person's service.

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[*Internal Reference.*—Social Security Act §210(m) has a footnote referring to P.L. 95-202.]

P.L. 95-210, Approved December 13, 1977 (91 Stat. 1485)
[Social Security—Rural Health Clinic Services]

SECTION 1.

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(e) [42 U.S.C 1395x note] Any private, nonprofit health care clinic that—

(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

(2) meets the definition of a rural health clinic under section 1861(aa)(2) or section 1905(l) of the Social Security Act, except for clause (i) of section 1861(aa)(2),

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act, as satisfying the definition of a rural health clinic under such section.

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DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS

SEC. 3. [42 U.S.C. 1395b-1 note] (a) The Secretary shall provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under title XVIII of the Social Security Act and, notwithstanding any other provision of such title, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under such title if provided by a physician.

(b) The demonstration projects developed under subsection (a) shall be of sufficient scope and carried out on a broad enough scale to allow the Secretary to evaluate fully—

(1) the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner;

(2) the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics;

(3) the appropriate definition for such clinics;

(4) the appropriate criteria to use for the purposes of designating urban medically underserved areas; and

(5) such other possible changes in the provisions of title XVIII of the Social Security Act as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics.

(c) Grants, payments under contracts, and other expenditures made for demonstration projects under this section shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each trust fund shall be determined by the Secretary giving due regard to the purposes of the demonstration projects.

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(e) As used in this section, the terms "physician assistant" and "nurse practitioner" have the meanings given such terms in section 1861(aa)(3) of the Social Security Act.

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[*Internal References.*—Social Security Act §1861(aa), the catchline to §1910 and P.L. 90-248, §402 have footnotes referring to P.L. 95-210.]

P.L. 95-216, Approved December 20, 1977 (91 Stat. 1509)
Social Security Amendments of 1977

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SEC. 317.

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(b) * * *

(4) [26 U.S.C. 1401 note] Notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual.

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REDUCED BENEFITS FOR SPOUSES RECEIVING GOVERNMENT PENSIONS

SEC. 334.

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(g) [42 U.S.C. 402 note] (1) The amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.

(h) [42 U.S.C. 402 note] In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2)) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).

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[*Internal References.*—Social Security Act §§203(a), 215(a), and 230(d) cite the Social Security Amendments of 1977. The catchlines for §202(b), (c), (e), (f), and (g), and title VII and §§211(c) and 706(d) have footnotes referring to P.L. 95-216.]

P.L. 95-250, Approved March 27, 1978 (92 Stat. 163)
[Redwood National Park]

* * * * * * *

TITLE II

DEFINITIONS

SEC. 201. [None assigned.] As used in this title, the term—

(1) "Secretary" unless otherwise indicated, means the Secretary of the Department of Labor;

(2) "expansion area" means the area indicated as "Proposed Additions" (exclusive of the park protection zone) on the map entitled "Additional Lands, Redwood National Park, Humboldt County, California", numbered 167-80005-D and dated March 1978. The number of acres authorized to be included within the expansion area is forty-eight thousand acres, as further provided herein;

(3) "employee" means a person employed by an affected employer and, with such exceptions as the Secretary may determine, in an occupation not described by section 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. 213(a)(1));

(4) "contract employees" are employees performing work pursuant to a contract or agreement for services within or directly related to the expansion area between an affected contract employer and an affected woods employer;

(5) "industry employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or successor by purchase, merger, or other form of acquisition), of which a working portion or division is an affected employer;

(6) "affected employer" means a corporation, partnership, joint venture, person, or other form of business entity (including a predecessor or a successor by purchase, merger, or other form of acquisition), or a working portion or division thereof, which is engaged in the harvest of timber or in related sawmill, plywood, and other wood processing operations, and which meets the qualifications set forth in the definition of affected woods employer, affected mill employer, or affected contract employer;

(7) "affected woods employer" means an affected employer engaged in the harvest of redwood timber who owns at least 3 per centum of the number of acres authorized to be included within the expansion area on January 1, 1977, and on the date of enactment of this section: *Provided*, That an affected woods employer shall be only that major portion or division of the industry employer directly responsible for such harvesting operations;

(8) "affected mill employer" means an affected employer engaged in sawmill, plywood, and other wood processing operations in Humboldt or Del Norte Counties in the State of California who has either (A) obtained 15 per centum or more of its raw wood materials directly from affected woods employers during calendar year 1977, or (B) is a wholly owned mill of an affected woods employer: *Provided*, That an affected mill employer shall be only that major portion or division of the industry employer directly responsible for such wood processing operations;

(9) "affected contract employer" means an affected employer providing services pursuant to contract with an affected woods employer, if at least 15 per centum of said employer's employee-hours worked during calendar year 1977 were within or directly related to the expansion area pursuant to such contract or contracts;

(10) "covered employee" means an employee who—

(A) had seniority under a collective bargaining agreement with an affected employer as of May 31, 1977, has at least twelve months of creditable service as of the date of enactment of this section, and has performed work for one or more affected employers on or after January 1, 1977, or

(B) has performed work for one or more affected employers for at least one thousand hours from January 1, 1977, through the period to the date of

enactment of this section, and has a continuing employment relationship with an affected employer, as determined by the Secretary, as of the date of enactment of this section or, if laid off on or after May 31, 1977, had such a relationship as of the date of such layoff;

(11) "affected employee" means a covered employee who is either totally or partially laid off by an affected employer within a time period beginning on or after May 31, 1977, and ending September 30, 1980, unless extended, as provided in section 203, or is determined by the Secretary to be adversely affected by the expansion of the Redwood National Park. An employee shall be deemed adversely affected as of the date of the employee's layoff, downgrading, or termination;

(12) "total layoff" means a calendar week during which affected employers have made no work available to a covered employee and made no payment to said covered employee for time not worked, and "partial layoff" means a calendar week for which all pay received by a covered employee from affected employers is at least 10 per centum less than the layoff or vacation replacement benefit that would have been payable for that week had said covered employee suffered a total layoff: *Provided,* That the terms "total layoff" and "partial layoff" shall also apply to a covered employee who had received any workers' compensation benefits or unemployment compensation disability benefits after said covered employee becomes able to work and available for work and is otherwise within the meaning of total layoff and partial layoff as defined in this paragraph;

(13) "Federal agency" has the same meaning as "agency" in section 552(c) of title 5, United States Code;

(14) "suitable work" shall be defined—

(A) as set forth in the California Unemployment Insurance Code, or Federal law if applicable, unless otherwise more restrictively defined by the Secretary, taking into account the unique characteristics of logging and related work; and

(B) with respect to an employee who has completed retraining paid for by the Secretary, as a job paying no less than the prevailing wage rate in the area for the occupation for which said employee was retrained; or

(C) as a job comparable with that which said employee would be required to accept pursuant to the seniority provisions of the applicable collective-bargaining agreement (or, if not covered by such an agreement, in accordance with the usual practice of the affected employer);

(15) "seniority" with respect to an employee covered by a collective-bargaining agreement with an affected employer, shall be determined as provided in such agreement and shall be deemed to refer to company seniority, if the agreement provides for such seniority and, otherwise, to plant seniority;

(16) "continuous service" with respect to employees not having seniority under a collective-bargaining agreement with an affected employer or an industry employer shall mean a period of time measured in months equal to the sum of all hours during which the employee performed work for said employer plus all hours for which the employee received pay for time not worked divided by one hundred and seventy-three;

(17) "performed work" shall include any time during which an employee worked for an affected employer or with respect to which an employee received pay from such an employer for time not worked, and shall also include any time during which an employee would have been at work for such an employer if not for service in the armed forces, for a leave (approved by the employer) for work with an employee organization, or for a disability for which said employee received workers' compensation, disability compensation benefits provided under California law, or social security disability pension benefits: *Provided,* That contract employees shall be deemed to have performed work during the period of such service or disability only if—

(A) the employee worked within or directly related to the expansion area immediately prior to the occurrence of such service or disability and

(B) the employee returned or sought to return to work for an affected contract employer immediately after the end of the service or disability if that was prior to the date of enactment.

The term "work performed", when used in relation to a period of time, shall also be deemed to include any period during which an employee is deemed to have performed work;

(18) "terminal pay" means the payments to employees provided for in sections 207, 208, and 209 which, regardless of the designations used herein to distinguish among them are intended and shall be deemed to be severance pay and, as such, shall be treated for Federal income tax and State unemployment insurance purposes in the same manner as is provided by California State law;

(19) Notwithstanding[1] any other provision of this Act, the Secretary shall reduce the amount of terminal pay for an employee, as calculated pursuant to section 207, 208, or 209, by the amount of the Federal and State income taxes which would be required to be withheld by an employer from wages equal to such terminal pay if paid to an employee with the same number of income tax exemptions as the recipient. For purposes of determining the amounts of such reductions with respect to severance payments made pursuant to sections 208 and 209, said severance payments shall be prorated over the number of weeks the equivalent sums would have been paid if the employees were eligible for and claiming the weekly layoff benefits provided in section 207. The Secretary shall withhold social security contributions from terminal pay in the same amounts as would be withheld if such pay (before the reductions provided for in this subsection) were wages and the Secretary shall make contributions on behalf of employees receiving terminal pay to the trust funds created under section 201 of the Social Security Act equal to the contributions required to be made by an employer paying wages equal to such unreduced terminal pay; and

(20) "Sixty-fifth[2] birthday" means the last day of the month in which the sixty-fifth birthday occurs.

SEC. 202. [None assigned.] The Secretary is authorized to develop the necessary procedures to implement this title.

AFFECTED EMPLOYEES

SEC. 203. [None assigned.] The total or partial layoff of a covered employee employed by an affected employer during the period beginning May 31, 1977, and ending September 30, 1980, other than for a cause that would disqualify an employee for unemployment compensation, except as provided in section 205, is conclusively presumed to be attributable to the expansion of Redwood National Park: *Provided*, That the Secretary may, for good cause, extend this period for any group of covered employees by no more than one year at a time after September 30, 1980. Any covered employee laid off during that period by an affected employer shall be considered an affected employee at any time said employee is on such layoff within the period ending September 30, 1984, or, if earlier, the end of said employee's period of protection as defined herein: *Provided, however,* That the number of affected employees with respect to an affected contract employer shall be limited in any week to that number of such employees otherwise affected as provided herein that is equal to the percentage of the affected employer's employee hours during calendar year 1977 that were worked within or directly related to the expansion area.

SEC. 204. [None assigned.] (a) The Secretary shall provide, to the maximum extent feasible, for retention and accrual of all rights and benefits which affected employees would have had in an employment with affected employers during the period in which they are affected employees. The Secretary is authorized and shall seek to enter into such agreements as he may deem to be appropriate with affected employees and employers, labor organizations representing covered employees, and trustees of applicable pension and welfare funds, or to take such other actions as he deems appropriate to provide for affected employees (including the benefits provided for in section 207(d)) the following rights and benefits:

(1) retention and accrual of seniority rights, including recall rights (or, in the case of employees not covered by collective-bargaining agreements, application of the same preferences and privileges based upon length of continuous service as are applied under the affected employer's usual practices) under conditions no more burdensome to said employees than to those actively employed; and

(2) continuing entitlement to health and welfare benefits and accrual of pension rights and credits based upon length of employment and/or amounts of earnings to the same extent as and at no greater cost to said employees than would have been applicable had they been actively employed.

(b) The Secretary shall provide, additionally, for continuing entitlement to health and welfare benefits (other than group life and additional death, dismemberment, and loss of sight benefits) for employees who—

(1) retired from employment with an affected employer for reasons other than disability on or after May 31, 1977, but not later than September 30, 1984;

(2) are receiving pension benefits under a plan financed by industry employers;

(3) were age sixty-two or older but less than age sixty-five at the time of retirement; and

(4) are not eligible for benefits under title XVIII of the Social Security Act.

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[1] As in original. Possibly should be "notwithstanding".
[2] As in original. Possibly should be "sixty-fifth".

(c) The agreements described in subsection (a) of this section shall provide for the Secretary, effective October 1, 1977, to make payments on behalf of eligible affected employees including employees eligible for the benefits provided for in section 207(d) to the applicable pension and welfare trust funds and to insurance companies. Such payments may be made in the form of grants and/or contributions equivalent to the difference between the amounts payable by their affected employers and labor organizations pursuant to collective-bargaining agreements (or, in the absence of such agreements, pursuant to established practice) and the amounts that would have been paid by their affected employers and their labor organizations had said employees worked or received pay for the periods for which they receive layoff benefits: *Provided,* That no payment shall be made to a pension fund on behalf of an employee who is receiving a pension from such fund. For purposes of determining the amounts of contributions calculated on the basis of worked or compensable hours, layoff and vacation replacement benefits shall be converted into the hours they represent in accordance with regulations to be issued by the Secretary.

(d) No person shall be subject to liability under the Employee Retirement Income Security Act of 1974, section 302 of the Labor-Management Relations Act, 1947, or any other law, solely by reason of the receipt of payments from the Secretary or the payment of benefits to affected employees in accordance with this section. Receipt of such payments and the payment of such benefits are deemed to be consistent with any relevant plan documents. No action taken pursuant to this section shall be deemed to place the Secretary in the position of an employer or a party in interest (including a fiduciary) for purposes of the Employee Retirement Income Security Act of 1974.

SEC. 205. [None assigned.] (a) An application for unemployment compensation filed by a covered employee on or after the first Monday following the date of enactment shall be deemed an application for the benefits provided by this Act.

(b) An affected employee shall be eligible (unless said employee has received a social security retirement or disability benefit or a pension under a plan contributed to by an affected employer) for layoff and vacation replacement benefits, as defined herein, effective the first Monday following the date of enactment, for each week of total or partial layoff if, with respect to said week, said employee—

(1) is registered with the United States Employment and Training Service in Humboldt or Del Norte Counties or one of the adjacent counties in the State of California or at such other location as the Secretary may designate;

(2) is eligible for unemployment compensation benefits under the California Unemployment Insurance Code: *Provided,* That the Secretary is authorized and directed to provide for the payment of benefits under this title to an affected employee who is held ineligible or is disqualified for benefits under said code solely because of one or more of the following reasons: insufficient base period earnings; exhaustion of benefit rights; earnings in excess of the amount which would entitle the employee to a partial benefit for the week; the waiting week requirement; unavailability for work because of jury duty, National Guard duty, retraining authorized, financed or approved by a public agency, or because of a similar reason as determined by the Secretary; refusal of work which is not "suitable work" as defined in section 201(14); receipt of a worker's compensation or other benefit for partial disability which the employee would be entitled to receive while working; and any other cause of ineligibility with respect to which the Secretary determines that, under the circumstances, it would be unreasonable or otherwise contrary to the purpose of this Act to deny said employee a benefit provided for herein; and

(3) the employee's period of protection has not been exhausted or otherwise ended by acceptance of a severance payment.

SEC. 206. [None assigned.] (a) The period of protection for an affected employee shall start with the beginning of the first week for which said employee is eligible to receive a layoff or vacation replacement benefit as provided by this title, and shall continue until the earliest of (i) the date said employee accepts a severance payment provided for below, (ii) a period equal to the length of the employee's creditable service is exhausted, or (iii) said employee's sixty-fifth birthday. In no event shall such period extend beyond September 30, 1984, except as provided by subsection (d) of section 207.

(b) Creditable service shall be computed as follows:

(1) a period equal to the length of an employee's seniority (or continuous service as defined herein) with said employee's last affected employer as of the date said employee's period of protection begins; plus

(2) a period equal to the sum of all prior periods during which the employee had seniority (or continuous service) with the same affected employer and with other industry employers: *Provided,* That if such seniority was broken (or such continuous service was interrupted) for more than three consecutive years for any reason other than employment with other affected or industry employers, periods of

service in the Armed Forces or disabilities for which said employee received any workers' compensation benefits, unemployment compensation disability benefits, or disability benefits under the Social Security Act, any periods of seniority (or continuous service) prior to the break in seniority (or interruption in continuous service) shall be disregarded.

(c) If necessary, in order to establish an employee's creditable service, the Secretary shall request authorization to examine said employee's social security wage record and shall compute such service from it by a method to be prescribed by regulation.

SEC. 207. [None assigned.] (a) Except as further provided in this section, the amount of an eligible employee's weekly layoff benefit shall be equal to (1) the annual average of all hours of work performed by said employee for the last affected employer or whom the employee worked prior to the date of enactment of this section during those three of the five calendar years immediately preceding said date during which such hours were greatest, counting hours paid for at time and a half and double time as one and one-half and two hours, respectively, multiplied by (2) the wage rate applicable, during the week for which the benefit is payable, to the highest paid job held by said employee, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section, and divided by (3) fifty-two.

(b) The weekly benefit amount for an eligible employee with less than five calendar years of employment with one affected employer immediately prior to the enactment date shall be equal to the lessor[3] of—

(1) the average benefit that would be payable with respect to the same week to those covered employees (if they were eligible in the same week) who had five or more calendar years of employment with the same affected employer (in accord with subsection (a) of this section) whose benefit amounts are computed on the basis of the wage rate for a job the same as, or most similar to, the highest paid job said employee had held, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section, or

(2) an amount calculated by substituting in clause (1) of subsection (a) the annual average of all hours of work performed by said employee for said employer during those calendar years for which said employee had performed work and throughout which he had seniority (or continuous service).

(c) Notwithstanding subsections (a) and (b), the Secretary shall classify as a "seasonal employee" any affected employee whose highest paid job held, other than by temporary assignment, with said affected employer during the period from January 1, 1977, through the date of enactment of this section was in an occupation in which the average annual number of weeks during which work was actually performed by all covered employees employed in said occupation during the five calendar years preceding the enactment date was forty or less. With respect to such seasonal employees—

(1) the calculation of benefit amount set forth in subsection (a) shall be modified by—

(A) deducting from the hours for which said employee received pay those hours representing vacation pay and vacation pay increments and;

(B) substituting for the fifty-two provided in clause (3) of subsection (a) a divisor equal to the average annual number of weeks for which said employee performed work for an affected employer in said occupation during those three of the five calendar years immediately preceding the date of enactment during which the number of such weeks was greatest: *Provided*, That this calculation shall be modified in accord with subsection (b) with respect to those employees who had less than five calendar years of employment with one affected employer immediately prior to the date of enactment of this section.

(2) the number of weekly benefits payable in any calendar year shall not exceed the annual average number of weeks for which a seasonal employee received pay from an affected employer for work performed in the employee's occupation, as established by paragraph (1)(B), and shall be payable only during those weeks of each year determined by the Secretary to be the usual season for that occupation;

(3) vacation pay and vacation pay increments shall be paid in the same amounts and at the same times of each year as they would have been paid had said employee performed work during all of the time for which said employee receives layoff benefits. Such pay is referred to herein as "vacation replacement benefits".

(d) Notwithstanding any other provision of this Act, the benefits for any affected employee who will reach the age of sixty on or before September 30, 1984, shall be

[3] As in original. Probably should be "lesser".

extended after the end of the employee's period of protection (unless severance pay has been accepted) until the employee's sixty-fifth birthday, and shall be equal to said employee's weekly layoff benefit.

(e) The benefit amount provided by this section for any week of total or partial layoff shall be reduced by—

(1) the full amount of any earnings, including pay for time not worked with respect to the same week, from employment obtained pursuant to section 103, or employment by employers engaged in timber harvesting, or in related sawmill, plywood, and other wood processing operations;

(2) 50 per centum of earnings and pay for time not worked from any other employer with respect to that week; and

(3) the full amount of any unemployment compensation attributable to that week.

SEC. 208. [None assigned.] (a) An affected employee (other than a short-service employee described in subsection (a) of section 209) shall be paid severance pay in accordance with this section if said employee:

(1) has been on a continuous layoff from employment with the employee's last affected employer for a period of at least twenty weeks subsequent to December 31, 1977;

(2) has no definite recall date for work with the affected employer by whom the employee was laid off and no offer of suitable work by any affected employer; and

(3) applies for severance pay during a week with respect to which said employee has not performed work for an affected employer: *Provided*, That this clause shall not result in denial of severance pay to an otherwise eligible employee who at the time of application is totally and permanently disabled as defined in the Social Security Act*; or

(4) was permanently separated from employment with an affected employer during the period beginning May 31, 1977, and ending on the date of enactment of this Act, as a result of the closure of the mill or plant in which said employee was employed and has not, since said separation, been employed by an affected employer.

Provided, That an employee shall be deemed an affected employee for purposes of this section if said employee meets the requirements of clauses (1), (2), and (3) of section 204(b).

(b) The amount of severance pay payable to an employee shall be computed by multiplying the applicable number of weeks determined in accordance with subsection (c) by the amount of the weekly layoff benefit (without reduction for earnings or other benefits) which is payable, or would be payable if the employee were eligible, for the week in which the application was filed: *Provided*, That for a seasonal employee the amount so calculated, plus the amount of vacation replacement benefits applicable for that year shall be multiplied by the number of weeks in said employee's usual season, as determined in section 207(c), and the result divided by fifty-two.

(c) The number of weeks of severance pay shall be equal to one week for each month of the employee's creditable service up to a maximum of seventy-two weeks: *Provided*, That the severance payment to any employee shall not exceed the total amount of the weekly layoff and vacation replacement benefits which would have been payable if said employee were to be eligible for such benefits continuously from the week of application until the end of the applicable period of protection (or, in the case of an employee described in the final proviso of subsection (a), until the earlier of said employee's sixty-fifth birthday or September 30, 1984), calculated on the basis of the weekly amounts of such benefits as of the date of application for severance pay.

(d) Acceptance of severance pay terminates the affected employee's period of protection and makes said employee ineligible thereafter for all other forms of terminal pay and for the protections provided in section 204, except as otherwise specifically provided in this Act.

(e) Before making a severance payment to an employee, the Secretary shall obtain said employee's written agreement that, upon resumption of employment in the industry within Humboldt and Del Norte Counties and the counties adjacent thereto in the State of California prior to September 30, 1980, or such later date established by the Secretary with respect to said employee pursuant to section 203, said employee will return it in weekly installments equal to a specified percentage of the employee's earnings in the industry, which the Secretary shall set at a reasonable level. The agreement shall include authorization for the Secretary to arrange with an employer for withholding of the applicable amounts from the employee's pay.

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*See Social Security Act §§216(i)(1) and 223(d) for the definition of "disability" under that Act. "Totally and permanently disabled" is not specifically defined in the Social Security Act.

SHORT-SERVICE EMPLOYEES

SEC. 209. [None assigned.] (a) Notwithstanding any other provision of this Act, an affected employee as defined in this title shall be ineligible for any benefit under this title except as provided in this section if:

(1) said employee will not reach age sixty before October 1, 1984; and

(2) said employee as of the date of becoming an affected employee, does not have service credit for pension purposes of at least five full years under a pension plan contributed to by industry employers.

(b) An affected employee described in subsection (a) shall be paid severance pay in accordance with this section if said employee meets the requirements of section 208(a).

(c) Said employee shall be paid a severance payment equal to forty times the hourly wage rate applicable at the time of application for severance pay to the highest paid job held by said employee, other than by temporary assignment, during calendar year 1977, with the employee's last affected employer for each one hundred and seventy-three hours for which said employee performed work for affected employers.

(d) Subsection (d) of section 208 shall be applicable to employees applying for and accepting severance payments pursuant to this section except that such employees shall remain eligible for allowances provided for in sections 211 and 212, and for retraining as provided for in section 210(a) and while in good faith engaged in such training shall be paid the same stipends and allowances as are generally applicable to individuals engaged in such retraining programs who are not employees as defined in this Act.

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ADMINISTRATION

SEC. 213. [None assigned.] (a) The Secretary shall be responsible for paying promptly all benefits and payments provided by this title.

(b) Effective October 1, 1977, there are authorized to be appropriated annually such sums as may be required to meet the obligations provided for in this title.

(c) The Secretary shall have the authority to obtain information necessary to carry out the responsibilities created under this Act in the same manner as provided by section 249 of the Trade Act of 1974 (19 U.S.C. 2321).

(d) The Secretary shall offer all reasonable cooperation and assistance to individuals who believe they may qualify for the benefits, payments, preferential hiring rights, and other protections provided for employees under this Act. Among other things, the Secretary shall—

(1) provide all covered employees with literature stating their rights and obligations in nontechnical terms; and

(2) develop and implement procedures for the filing (including filing by mail in appropriate circumstances as determined by the Secretary) of applications, appeals, and complaints relating to the rights and entitlements established for employees by this title designed to facilitate prompt determinations and prompt payment to eligible applicants.

(e) The Secretary shall direct that notices, reports, applications, appeals, and information concerning the implementation of this title required to be filed with the Secretary shall be filed at the offices of the United States Employment and Training Service in Humboldt and Del Norte Counties of the State of California and that information required to facilitate employees' exercise of their rights under this title shall be kept available at such offices unless the Secretary shall designate additionally.

(f) In all cases where two or more constructions of the language of this title would be reasonable, the Secretary shall adopt and apply that construction which is most favorable to employees. The Secretary shall avoid inequities adverse to employees that otherwise would arise from an unduly literal interpretation of the language of this title.

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[*Internal References.*—The catchlines to Social Security Act §201 and title XVIII have footnotes referring to P.L. 95-250.]

P.L. 95-433, Approved October 10, 1978 (92 Stat. 1047)
[Indian Claims Commission—Confederated Tribes and Bands of the Yakima Indian Nation]

* * * * * * *

That [25 U.S.C. 609c] (a) for purposes of this Act, the term—

(1) "tribe" means the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation;

(2) "tribal governing body" means the governing body of a tribe or a committee of the members of such body designated by such body for purposes of this Act;

(3) "Secretary" means the Secretary of the Interior acting through (unless otherwise determined by the Secretary) the Superintendent of the Bureau of Indian Affairs Agency serving the tribe involved;

(4) "minor" means a member of a tribe, or descendant of a member of a tribe, who has not attained the age of eighteen years and who has a minor's share;

(5) "minor's share" means the per capita share of a judgment award, and the investment income accruing thereto, which is held in trust by the Secretary for a minor; and

(6) "parent" means the biological or adoptive parent or parents, or other legal guardian, of a minor.

(b) Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466), the Act of March 12, 1968 (82 Stat. 47), or any other law, or any regulation or plan promulgated pursuant thereto, the minor's share of judgment funds heretofore or hereafter awarded by the Indian Claims Commission or the United States Court of Claims to a tribe may be disbursed to a parent of such minor pursuant to this Act.

(c) The minor's share of judgment funds may be disbursed in such amounts deemed necessary by such parent for the best interest of the minor for the minor's health, education, welfare, and emergencies under a plan governing such funds for each minor (or a plan governing funds of all minors in a family) approved by the Secretary and the tribal governing body of the minor's tribe.

(d) The Secretary shall provide a monthly report to each tribal governing body which has approved one or more plans pursuant to subsection (c). Each such report shall include the amount and purpose of every disbursement made during each month under such plans.

SEC. 2. [25 U.S.C. 609c-1] Any part of any of the judgment funds referred to in the first section of this Act that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 95-433.]

P.L. 95-498, Approved October 21, 1978 (92 Stat. 1672)
[Pueblo of Santa Ana Indians, New Mexico]

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SEC. 5. [None assigned.] (a) Any and all gross receipts derived from, or which relate to, the property declared to be held in trust by this Act which were received by the United States subsequent to the acquisition by the United States of such property and prior to the date of the enactment of this Act (including State school lands referred to in section 7), from whatever source and for whatever purpose, shall, as of the date of enactment of this Act, be deposited to the credit of the Pueblo of Santa Ana and may be expended by such tribe for such beneficial programs as the tribal governing body may determine.

(b) All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease referred to in section 4(a) of this Act, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Santa Ana pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income

or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 95-498.]

P.L. 95-499, Approved October 21, 1978 (92 Stat. 1679)
[Pueblo of Zia, New Mexico Indians]

[None assigned.] That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia:

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SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Zia pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 95-499.]

P.L. 95-557, Approved October 31, 1978 (92 Stat. 2080)
Housing and Community Development Amendments of 1978

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TITLE IV—CONGREGATE SERVICES

SHORT TITLE

SEC. 401. [42 U.S.C. 8001 note] This title may be cited as the "Congregate Housing Services Act of 1978".

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MISCELLANEOUS PROVISIONS

SEC. 410. [42 U.S.C. 8009]

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(b) No service provided to a public housing resident or to a resident of a housing project assisted under section 202 of the Housing Act of 1959[1] under this title, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving services assisted under this title shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

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[1]See P.L. 86-372, §202, in Vol. II, p. 473.

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[*Internal References.*—Social Security Act §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), 1612(a) and 1612(b) have footnotes referring to P.L. 95-557.]

P.L. 95-588, Approved November 4, 1978 (92 Stat. 2497)
Veterans' and Survivors' Pension Improvement Act of 1978

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SAVINGS PROVISIONS FOR PERSONS ENTITLED TO PENSION AS OF DECEMBER 31, 1978

SEC. 306. [38 U.S.C. 521 note] (a)(1)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, may elect to receive pension under such section as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(2) Any person eligible to make an election under paragraph (1) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 521, 541, or 542, as appropriate, of title 38, United States Code, as in effect on December 31, 1978, except that—

(A) pension may not be paid to such person if such person's annual income (determined in accordance with section 503 of title 38, United States Code, as in effect on December 31, 1978) exceeds $4,038, in the case of a veteran or surviving spouse without dependents, $5,430, in the case of a veteran or surviving spouse with one or more dependents, or $3,299, in the case of a child; and

(B) the amount prescribed in subsection (f)(1) of section 521 of such title (as in effect on December 31, 1978) shall be $1,285;

as each such amount is increased from time to time under paragraph (3).

(3) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall, effective on the date of such increase under such section 3112, increase—

(A) the annual income limitations in effect under paragraph (2); and

(B) the amount of income of a veteran's spouse excluded from the annual income of such veteran under section 521(f)(1) of such title, as in effect on December 31, 1978;

by the same percentage as the percentage by which such maximum annual rates under such sections 521, 541, and 542 are increased.

(b)(1) Effective January 1, 1979, section 9 of the Veterans' Pension Act of 1959 (Public Law 86-211) is repealed.

(2)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 9(b) of the Veterans' Pension Act of 1959 may elect to receive pension under section 521, 541, or 542 of title 38, United States Code, as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator of Veterans' Affairs may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(3) Any person eligible to make an election under paragraph (2) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 9(b) of the Veterans' Pension Act of 1959, as in effect on December 31, 1978, except that pension may not be paid to such person if such person's annual income (determined in accordance with the applicable provisions of law, as in effect on December 31, 1978) exceeds $3,534, in the case of a

veteran or surviving spouse without dependents or in the case of a child, or $5,698, in the case of a veteran or surviving spouse with one or more dependents, as each such amount is increased from time to time under paragraph (4).

(4) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator shall, effective on the date of such increase under such section 3112, increase the annual income limitations in effect under paragraph (3) by the same percentage as the percentage by which the maximum annual rates under such sections 521, 542, and 543 are increased.

(c) Any case in which—

(1) a claim for pension is pending in the Veterans' Administration on December 31, 1978;

(2) a claim for pension is filed by a veteran after December 31, 1978, and within one year after the date on which such veteran became totally and permanently disabled, if such veteran became totally and permanently disabled before January 1, 1979; or

(3) a claim for pension is filed by a surviving spouse or by a child after December 31, 1978, and within one year after the date of death of the veteran through whose relationship such claim is made, if the death of such veteran occurred before January 1, 1979;

shall be adjudicated under title 38, United States Code, as in effect on December 31, 1978. Any benefits determined to be payable as the result of the adjudication of such a claim shall be subject to the provisions of subsection (a).

(d) In any case in which any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959, elects (in accordance with subsection (a)(1) or (b)(2), as appropriate) before October 1, 1979, to receive pension under such section as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall pay to such person an amount equal to the amount by which the amount of pension benefits such person would have received had such election been made on January 1, 1979, exceeds the amount of pension benefits actually paid to such person for the period beginning on January 1, 1979, and ending on the date preceding the date of such election.

(e) Whenever there is an increase under subsections (a)(3) and (b)(4) in the annual income limitations with respect to persons being paid pension under subsections (a)(2) and (b)(3), the Administrator of Veterans' Affairs shall publish such annual income limitations, as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act is published by reason of a determination under section 215(i) of such Act.

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[*Internal References.*—Social Security Act §1133(a) and P.L. 96-272 §310(b), (Vol. II, p. 719) cite the Veterans' and Survivors' Pension Improvement Act of 1978.]

P.L. 95-608, Approved November 8, 1978 (92 Stat. 3069)
Indian Child Welfare Act of 1978

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SEC. 2. [25 U.S.C. 1901] Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. [25 U.S.C. 1902] The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. [25 U.S.C. 1903] For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or

individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. [25 U.S.C. 1911] (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided,* That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102. [25 U.S.C. 1912] (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. [25 U.S.C. 1913] (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. [25 U.S.C. 1914] Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. [25 U.S.C. 1915] (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided,* That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. [25 U.S.C. 1916] (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. [25 U.S.C. 1917] Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. [25 U.S.C. 1918] (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jursidiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. [25 U.S.C. 1919] (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. [25 U.S.C. 1920] Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. [25 U.S.C. 1921] In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. [25 U.S.C. 1922] Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. [25 U.S.C. 1923] None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. [25 U.S.C. 1931] (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. [25 U.S.C. 1932] The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. [25 U.S.C. 1933] (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare[1], and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided,* That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. [25 U.S.C. 1934] For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. [25 U.S.C. 1951] (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

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TITLE IV—MISCELLANEOUS

SEC. 401. [25 U.S.C. 1961] (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

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SEC. 403. [25 U.S.C. 1963] If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

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[*Internal References.*—The catchlines to Social Security Act titles II and IV, Part B (at §420) and §405 and §§402(a) and 1631(a) have footnotes referring to P.L. 95-608.]

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[1]P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

P.L. 95-630, Approved November 10, 1978 (92 Stat. 3641)
Financial Institutions Regulatory and Interest Rate Control Act of 1978

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TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. [12 U.S.C. 3401 note] This title may be cited as the "Right to Financial Privacy Act of 1978".

DEFINITIONS

SEC. 1101. [12 U.S.C. 3401] For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "supervisory agency" means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—

(A) the Federal Deposit Insurance Corporation;
(B) the Federal Savings and Loan Insurance Corporation;
(C) the Federal Home Loan Bank Board;
(D) the National Credit Union Administration;
(E) the Board of Governors of the Federal Reserve System;
(F) the Comptroller of the Currency;
(G) the Securities and Exchange Commission;
(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II); or
(I) any State banking or securities department or agency; and

(7) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

CONFIDENTIALITY OF RECORDS—GOVERNMENT AUTHORITIES

SEC. 1102. [12 U.S.C. 3402] Except as provided by section 1103(c) or (d), 1113, or 1114, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 1104;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 1105;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 1106;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 1107; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 1108.

CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

SEC. 1103. [12 U.S.C. 3403] (a) No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this title.

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this title.

(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation[1] or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d)(1) Nothing in this title shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this title shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

CUSTOMER AUTHORIZATIONS

SEC. 1104. [12 U.S.C. 3404] (a) A customer may authorize disclosure under section 1102(1) if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 1109, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

ADMINISTRATIVE SUBPENA AND SUMMONS

SEC. 1105. [12 U.S.C. 3405] A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this

[1] P.L. 100-690, §6186(a), inserted ", corporation".

CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

SEC. 1103. [12 U.S.C. 3403] (a) No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this title.

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this title.

(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation[1] or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution. law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d)(1) Nothing in this title shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this title shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

CUSTOMER AUTHORIZATIONS

SEC. 1104. [12 U.S.C. 3404] (a) A customer may authorize disclosure under section 1102(1) if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 1109, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

ADMINISTRATIVE SUBPENA AND SUMMONS

SEC. 1105. [12 U.S.C. 3405] A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this

[1] P.L. 100-690, §6186(a), inserted ", corporation".

(agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

SEARCH WARRANTS

SEC. 1106. [12 U.S.C. 3406] (a) A Government authority may obtain financial records under section 1102(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978.".

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 1109(a). If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978.".

JUDICIAL SUBPENA

SEC. 1107. [12 U.S.C. 3407] A Government authority may obtain financial records under section 1102(4) pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena are being sought by this

(agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

FORMAL WRITTEN REQUEST

SEC. 1108. [12 U.S.C. 3408] A Government authority may request financial records under section 1102(5) pursuant to a formal written request only if—

(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

DELAYED NOTICE—PRESERVATION OF RECORDS

SEC. 1109. [12 U.S.C. 3409] (a) Upon application of the Government authority, the customer notice required under section 1104(c), 1105(2), 1106(c), 1107(2), 1108(4), or 1112(b) may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding[2] subparagraphs.

An application for delay must be made with reasonable specificity.

(b)(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a), it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (title II, Public Law 95-223), or section 5 of the United Nations Participation Act (22 U.S.C. 287c), and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specifiy that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason) . The purpose of the investigation or official proceeding was .".

(c) When access to financial records is obtained pursuant to section 1114(b) (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b), as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).".

(d) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a).

CUSTOMER CHALLENGE PROVISIONS

SEC. 1110. [12 U.S.C. 3410] (a) Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal

[2] As in original. Should be "preceding".

written request, with copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this title.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this title. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this title, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).

(e) The challenge procedures of this title constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this title.

(f) Nothing in this title shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this title shall entitle a customer to assert the rights of a financial institution.

DUTY OF FINANCIAL INSTITUTIONS

SEC. 1111. [12 U.S.C 3411] Upon receipt of a request for financial records made by a Government authority under section 1105 or 1107, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 1103(b).

USE OF INFORMATION

SEC. 1112. [12 U.S.C. 3412] (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of have been furnished to pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109(a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109(a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109(a) and (b) shall serve to the customer the notice specified in section 1109(b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Notwithstanding section 1101(6) or any other provision of this title, the exchange of financial records or other information with respect to a financial institution among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council is permitted.

(f) TRANSFER TO ATTORNEY GENERAL.—

(1) IN GENERAL.—Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) LIMITATION ON USE.—Records so transferred shall be used only for criminal investigative or prosecutive purposes by the Department of Justice and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department.[3]

EXCEPTIONS

SEC. 1113. [12 U.S.C. 3413] (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Nothing in this title prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

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[3] P.L. 100-690, §6186(b), added subsection (f).

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h)(1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409).

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of the Internal Revenue Code of 1954, title II of the Social Security Act, or the Railroad Retirement Act of 1974.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be barred from redisclosure by the financial institution or its agents.

(l) CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.—Nothing in this title shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31, United States Code.[4]

SPECIAL PROCEDURES

SEC. 1114. [12 U.S.C. 3414] (a)(1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.

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[4] P.L. 100-690, §6186(c), added subsection (l).

(b)(1) Nothing in this title shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;

(B) serious property damage; or

(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109(c).

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

COST REIMBURSEMENT

SEC. 1115. (a) [12 U.S.C. 3415] Except for records obtained pursuant to section 1103(d) or 1113(a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) [12 U.S.C. 3415 note] This section shall take effect on October 1, 1979.

JURISDICTION

SEC. 1116. [12 U.S.C. 3416] An action to enforce any provision of this title may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

CIVIL PENALTIES

SEC. 1117. [12 U.S.C. 3417] (a) Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Whenever the court determines that any agency or department of the United States has violated any provision of this title and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this title in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 1113(l)[5] shall not be

[5] P.L. 100-690, §6186(d)(1), inserted "or pursuant to the provisions of section 1113(l)".

liable to the customer for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State[6].

(d) The remedies and sanctions described in this title shall be the only authorized judicial remedies and sanctions for violations of this title.

INJUNCTIVE RELIEF

SEC. 1118. [12 U.S.C. 3418] In addition to any other remedy contained in this title, injunctive relief shall be available to require that the procedures of this title are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

SUSPENSION OF STATUTES OF LIMITATIONS

SEC. 1119. [12 U.S.C. 3419] If any individual files a motion or application under this title which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

GRAND JURY INFORMATION

SEC. 1120. [12 U.S.C. 3420] Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.[7];

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

REPORTING REQUIREMENTS

SEC. 1121. [12 U.S.C. 3421] (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 1109 and the number of customer challenges made pursuant to section 1110 during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 1109(a)(3); the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 1104, 1105, 1106, 1107, 1108, 1109, or 1114 shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

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[*Internal References.*—The catchlines to Social Security Act §§205, 1631(e) and (f), and title IV, Part D (at §451) have footnotes referring to P.L. 95-630.]

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[6]P.L. 100-690, §6186(d)(2), inserted "under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State".

[7]P.L. 100-690, §6186(e), inserted "unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.". As in original. Period should be stricken.

P.L. 96-88, Approved October 17, 1979 (93 Stat. 668)
Department of Education Organization Act

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REDESIGNATION

SEC. 509. [20 U.S.C. 3508] (a) The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare is hereby redesignated the Secretary or official, as appropriate, of Health and Human Services.

(b) Any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any other official of the Department of Health, Education, and Welfare in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of this Act[1] shall be deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary or the Department under this Act.

[*Internal Reference.*—There is a reference to this public law in the Preface.]

P.L. 96-223, Approved April 2, 1980 (94 Stat. 229)
Crude Oil Windfall Profit Tax Act of 1980

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Title I—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

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ALLOCATION OF NET REVENUES FROM WINDFALL PROFIT TAX TO CERTAIN USES

SEC. 102. [26 U.S.C. 4986 note] (a) SEPARATE ACCOUNT IN TREASURY ESTABLISHED.—The net revenues from the windfall profit tax for each fiscal year beginning after September 30, 1980, and before October 1, 1990, are hereby allocated for accounting purposes to a separate account in the Treasury to be known as the Windfall Profit Tax Account (hereinafter in this section referred to as the "Account").

(b) SPECIFIED USES FOR AMOUNTS IN THE ACCOUNT.—

(1) BASIC NET REVENUES.—In the case of the amount of basic net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	60
Low-income assistance	25
Energy and transportation programs	15

(2) ADDITIONAL NET REVENUES.—In the case of the amount of additional net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	66⅔
Low-income assistance	33⅓

(3) SPECIAL RULE FOR LOW-INCOME ASSISTANCE FOR 1982 AND SUBSEQUENT YEARS.—In the case of any amount allocated under paragraph (1) to the subaccount for low-income assistance for the fiscal year beginning October 1, 1981, or any subsequent fiscal year—

(A) 50 percent shall be allocated to a program to assist AFDC and SSI recipients under the Social Security Act, and

[1]The President made this Act effective on May 4, 1980.

(B) 50 percent shall be allocated to a program of emergency energy assistance.

(c) NET REVENUES DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "net revenues of the windfall profit tax" means, for any fiscal year, the amount which the Secretary estimates to be the excess of—

(A) the gross revenues from the tax imposed by section 4986 for the fiscal year, over

(B) the sum of —

(i) the refunds of and other adjustments to such tax for such fiscal year, plus

(ii) the decrease in the income taxes imposed by chapter 1 resulting from the tax imposed by section 4986.

For purposes of subparagraph (A), there shall not be taken into account any revenue attributable to an economic interest in crude oil held by the United States.

(2) BASIC NET REVENUES.—The term "basic net revenues" means the estimated net revenues which would result for any period under the assumptions for such period which were made in enacting the Crude Oil Windfall Profit Tax Act of 1980.

(3) ADDITIONAL NET REVENUES.—The term "additional net revenues" means for any period the net revenues in excess of the basic net revenues for such period.

(d) PRESIDENT TO PROPOSE ALLOCATION OF NET REVENUES.—

(1) IN GENERAL.—The President shall propose for each fiscal year to which this section applies an allocation of the net revenues among the uses set forth in subsection (b).

(2) TIME AND MANNER FOR PROPOSING.—Except for the fiscal year beginning October 1, 1980, the proposal for each fiscal year shall be contained in the annual budget for such fiscal year. The proposal for the fiscal year beginning October 1, 1980, shall be submitted by the President within 90 days after the date of the enactment of this Act.

(e) REPORTS.—The Secretary of the Treasury shall report to the Congress not later than January 1 of 1982 and of each calendar year thereafter before 1992—

(1) the net revenues derived from the windfall profit tax for the fiscal year ending on September 30 of the preceding year, and

(2) the actual disposition for such fiscal year of such revenues among the uses specified in subsection (b).

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[*Internal References.*—The catchlines to Social Security Act title IV, Part A (at §401) and title XVI have footnotes referring to P.L. 96-223.]

P.L. 96-265, Approved June 9, 1980 (94 Stat. 441)
Social Security Disability Amendments of 1980

SEC. 1. [42 U.S.C. 1305 note] This Act may be cited as the "Social Security Disability Amendments of 1980".

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SEC. 201. * * *

(e) [42 U.S.C. 1382h note] The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act.

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AUTHORITY FOR DEMONSTRATION PROJECTS

SEC. 505. (a) [42 U.S.C. 1310 note] (1) The Secretary of Health and Human Services shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of (A) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled

beneficiaries and (B) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, earlier referral of beneficiaries for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation), to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally.

(3) In the case of any experiment or demonstration project under paragraph (1) which is initiated before June 10, 1990, the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

(4) On or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.

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(c) [42 U.S.C. 1310 note] The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under subsection (a) no later than June 9, 1990.

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[*Internal References.*—Social Security Act §§201(k) and 215(i) cite the Social Security Disability Amendments of 1980. The catchlines for Social Security Act titles II and XVIII, and §§223, 1110, and 1619 and §1616(c) have footnotes referring to P.L. 96-265.]

P.L. 96-272, Approved June 17, 1980 (94 Stat. 500)
Adoption Assistance and Child Welfare Act of 1980

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SEC. 102.

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(e) [42 U.S.C. 672 note] The Secretary of Health, Education, and Welfare, within three months after the close of each fiscal year[1], shall submit to the Congress a full and complete report on the number of children placed in foster care pursuant to voluntary placement agreements under sections 408 and 472 of the Social Security Act and on the reasons for such placements together with a description of the extent to which such placements have contributed to the achievement of the objectives of this title, including such recommendations as he may deem appropriate with respect to the continuation (in such section 472) of authority to make Federal payments for dependent children voluntarily placed in foster care.

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SEC. 103.

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[1]P.L. 100-203, §9131(a)(3), struck out "with respect to which the amendments made by this section are in effect".

(d) [42 U.S.C. 622 note] Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act was not the agency designated pursuant to section 402(a)(3) of that Act, such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title, such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act.

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SEC. 306.

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(b) [42 U.S.C. 1320b-2 note] * * *

(2) In the case of claims filed prior to the date of enactment of this Act on account of expenditures described in section 1132 of the Social Security Act made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act.

(c) [42 U.S.C. 1320b-2 note] Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.

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SEC. 310.

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(b)(1) [42 U.S.C. 1396a note] (A) For purposes of section 1902(a)(10)(A) of the Social Security Act, any individual who, prior to the date of enactment of this Act and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act, or was eligible for and received supplemental security income benefits under title XVI of such Act (or a supplementary payment described in section 13(c) of Public Law 93-233), and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, not occurred.

(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an "informed election" (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

(ii) The term "informed election" means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the "Administrator") with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.

(2) [42 U.S.C. 1320b-3 note] (A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act, of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

(B) Notwithstanding any other provision of law—

(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare, and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act, and State agencies making supplemental payments pursuant to section 1616 of such Act or an agreement entered into pursuant to section 212(a) of Public Law 93-66.

[*Internal References.*--Social Security Act §§422(b) and 1926(a) cite Public Law 96-272. Social Security Act §§471(a), 474(b), and the catchlines for §§472, 473, and 1132 have footnotes referring to P.L. 96-272.]

P.L. 96-422, Approved October 10, 1980 (94 Stat. 1799)
Refugee Education Assistance Act of 1980

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TITLE V—OTHER PROVISIONS RELATING TO CUBAN AND HAITIAN ENTRANTS

AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

SEC. 501. [8 U.S.C. 1522 note] (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act. The authorizations provided in section 414 of that Act shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

(2) Any reference in chapter III of title I of the Supplemental Appropriations and Rescission Act, 1980, to section 405(c)(2) of the International Security and Development Assistance Act of 1980 or to the International Security Act of 1980 shall be construed to be a reference to paragraph (1) of this subsection.

(b) In addition, the President may, by regulation, provide that benefits granted under any law of the United States (other than the Immigration and Nationality Act) with respect to individuals admitted to the United States under section 207(c) of the Immigration and Nationality Act shall be granted in the same manner and to the same extent with respect to Cuban and Haitian entrants.

(c)(1)(A) Any Federal agency may, under the direction of the President, provide assistance (in the form of materials, supplies, equipment, work, services, facilities, or otherwise) for the processing, care, maintenance, security, transportation, and initial reception and placement in the United States of Cuban and Haitian entrants. Such assistance shall be provided on such terms and conditions as the President may determine.

(B) Funds available to carry out this subsection shall be used to reimburse State and local governments for expenses which they incur for the purposes described in subparagraph (A). Such funds may be used to reimburse Federal agencies for assistance which they provide under subparagraph (A).

(2) The President may direct the head of any Federal agency to detail personnel of that agency, on either a reimbursable or nonreimbursable basis, for temporary duty with any Federal agency directed to provide supervision and management for purposes of this subsection.

(3) The furnishing of assistance or other exercise of functions under this subsection shall not be considered a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

(4) Funds to carry out this subsection may be available until expended.

(d) The authorities provided in this section are applicable to assistance and services provided with respect to Cuban or Haitian entrants at any time after their arrival in the United States, including periods prior to the enactment of this section.

(e) As used in this section, the term "Cuban and Haitian entrant" means—

(1) any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) any other national of Cuba or Haiti—

(A) who—

(i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

[*Internal References.*—Social Security Act §§415(f) and 1611(c) cite the Refugee Education Assistance Act of 1980.]

P.L. 96-465, Approved October 17, 1980 (94 Stat. 2071)
Foreign Service Act of 1980

TITLE I - THE FOREIGN SERVICE OF THE UNITED STATES

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CHAPTER 8 - FOREIGN SERVICE RETIREMENT AND DISABILITY

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SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

SEC. 851. [22 U.S.C. 4071] ESTABLISHMENT.—(a) There is hereby established a Foreign Service Pension System.

(b) Except as otherwise specifically provided in this subchapter or any other provision of law, the provisions of chapter 84 of title 5, United States Code, shall apply to all participants in the Foreign Service Pension System and such participants shall be treated in all respects similar to persons whose participation in the Federal Employees' Retirement System provided in that chapter is required.

SEC. 852. [22 U.S.C. 4071a] DEFINITIONS.—As used in this subchapter, unless otherwise specified—

(1) the term "court order" has the same meaning given in section 804(4);

(2) the term "Fund" means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 802;

(3) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of a participant under section 856 of this chapter (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 854 to obtain credit under this System for prior civilian or military service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;[1]

(4)[2] the term "normal cost" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(5)[3] the term "participant" means a person who participates in the Foreign Service Pension System;

(6)[4] the term "pro rata share" in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the service of the participant which is creditable under this chapter is of (B) the total number of years of such service, disregarding extra credit under section 817;

(7)[5] the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter based on the service of participants or former participants, over

(B) the sum of—

(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 856 and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 857;

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[1] P.L. 100-238, §241(2), added this paragraph (3).
[2] P.L. 100-238, §241(1), redesignated paragraph (3) as paragraph (4).
[3] P.L. 100-238, §241(1), redesignated paragraph (4) as paragraph (5).
[4] P.L. 100-238, §241(1), redesignated paragraph (5) as paragraph (6).
[5] P.L. 100-238, §241(1), redesignated paragraph (6) as paragraph (7).

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to the contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; and

(8)[6] the term "System" means the Foreign Service Pension System.

SEC. 853. [22 U.S.C. 4071b] PARTICIPANTS.—(a) Except for persons excluded by subsection (b), (c), or (d), all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954[7], who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 803 shall instead be participants in the Foreign Service Pension System.

(b) Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act.

(c) Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under subchapter I, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (determined without regard to any deposit or redeposit requirement under any such subchapter or title, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this subchapter (under regulations issued by the Secretary of State pursuant to section 860).

(d) The Secretary may exclude from the operation of this subchapter any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 306.

SEC. 854. [22 U.S.C. 4071c] CREDITABLE SERVICE.—(a) For purposes of this subchapter, creditable service of a participant includes—

(1) service as a participant after December 31, 1986;

(2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and

(3) except as provided in subsection (b), any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter I (determined without regard to any deposit or redeposit requirement under such subchapter, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title).

(b)(1) A participant who has received a refund of retirement deductions under subchapter I with respect to any service described in subsection (a)(3) may not be allowed credit for such service under this subchapter unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) A participant may not be allowed credit under this subchapter for any service described in subsection (a)(3) for which retirement deductions under subchapter I have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

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[6] P.L. 100-238, §241(1), redesignated paragraph (7) as paragraph (8).

[7] P.L. 99-514, §2, provides that any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 805(d) and regulations issued by the Secretary of State.

(c) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

(3) a full-time volunteer for a period of service of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service (as determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, United States Code) together with interest determined under regulations issued by the Secretary of State.

(d) Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5, United States Code) or under title III of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which was deducted and withheld from the individual's basic pay under the other retirement system during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

(e) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a[a] contribution (from the appropriation or fund which is used for payment of the salary of the participant) determined under section 857(a)[b] to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

SEC. 855. [22 U.S.C. 4071d] ENTITLEMENT TO ANNUITY.—(a)(1) Any participant may be retired under the conditions specified in section 811 and shall be retired under the conditions specified in sections 812 and 813 and receive benefits under this subchapter.

(2) For the purposes of this subsection—

(A) the term "participant", as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

(B) the term "System", as used in those sections, means the Foreign Service Pension System.

(b)(1) Any participant who retires voluntarily or mandatorily under section 607, 608, 811, 812, or 813 under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System and who has completed at least 5 years as a member of the Foreign Service shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(d)(1) of title 5, United States Code, for all service while a participant in this System and for prior service creditable under this subchapter not otherwise counted as—

(i) a member of the Service,

(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act, or

(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, United States Code, or in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code; and

(B) at the rate stated in section 8415(a) of title 5, United States Code, for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).

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[a]P.L. 100-238, §242(1), struck out "matching".
[b]P.L. 100-238, §242(2), inserted "determined under section 857(a)".

(3) Any participant who is involuntarily retired or separated under section 607, 608, or 610 and who would if a participant under subchapter I, become eligible for a refund of contributions or a deferred annuity under subchapter I, shall, in lieu thereof, receive benefits for an involuntary separation under this subchapter.

(4) A disability annuity under this subchapter required to be redetermined under section 8452(b) of title 5, United States Code, or computed under section 8452 (c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection (b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452(c) and (d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 811 of this Act.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5, United States Code, shall not be subject to section 8415(f)(1) of such title 5 if the former participant has 20 years of service creditable under this subchapter and is at least 50 years of age as of the date on which the annuity is to commence.

(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this subchapter rather than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an "assumed FSRDS annuity" rather than an "assumed CSRS annuity" as stated in such section. For the purpose of this subparagraph, the term "assumed FSRDS annuity" means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter I based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) A participant who is entitled to an immediate annuity under subsection (b) shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5, United States Code, as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Any participant who is separated for cause under section 610 shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

SEC. 856. [22 U.S.C. 4071e] DEDUCTIONS AND WITHHOLDINGS FROM PAY.—(a) The employing agency shall deduct and withhold from basic pay of each participant a percentage of basic pay equal to 7 1/2 percent minus the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to the rate of tax for old age, survivors and disability insurance).

(b) Each participant is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter based on the service of the participant.

(c) Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) shall be entered on individual retirement records.

SEC. 857. [22 U.S.C. 4071f] GOVERNMENT CONTRIBUTIONS.—(a) Each agency employing any participant shall contribute to the Fund the amount computed in a manner similar to that used under section 8423(a) of title 5, United States Code, pursuant to determinations of the normal cost percentage for the Foreign Service Pension System by the Secretary of State.

(b)(1) The Secretary of State shall compute the amount of the supplemental liability of the Fund as of the close of each fiscal year beginning after September 30, 1987. The amount of any such supplemental liability shall be amortized in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the System.

(2) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount of the installment computed under this subsection for such year.

(3) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (2) of this subsection for such year.

SEC. 858. [22 U.S.C. 4071g] COST-OF-LIVING ADJUSTMENTS.—Cost-of-living adjustments for annuitants under this System shall be granted under procedures in section 8462 of title 5, United States Code, in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

SEC. 859. [22 U.S.C. 4071h] GENERAL AND ADMINISTRATIVE PROVISIONS.—(a) The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapters III and VII of chapter 84 of title 5, United States Code. The Secretary of State shall, with respect to the Foreign Service Pension System, perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of such Office by such chapter 84 and may issue regulations for such purposes.

(b) Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 of title 5, United States Code, or the Director of such Office, would be appealable to the Merit Systems Protection Board shall, instead, be appealable to the Foreign Service Grievance Board, except that determinations of disability for participants shall be based upon the standards in section 808 (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

(c) At least every 5 years, the Secretary of the Treasury shall prepare periodic valuations of the Foreign Service Pension System and shall advise the Secretary of State of (1) the normal cost of the System, (2) the supplemental liability of the System, and (3) the amounts necessary to finance the costs of the System.

SEC. 860. [22 U.S.C. 4071i] TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1954 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

SEC. 861. [22 U.S.C. 4071j] FORMER SPOUSES.—(a)(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this subchapter, a former spouse of a participant or former participant is entitled, during the period described in subparagraph (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this subchapter if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service.

(B) The period referred to in subparagraph (A) is the period which begins on the first day of the month following the month in which the divorce or annulment becomes final and ends on the last day of the month before the former spouse dies or remarries before 55 years of age.

(2) The share referred to in paragraph (1) equals—

(A) 50 percent, if such former spouse was married to the participant throughout the actual years of service of the participant which are creditable under this chapter; or

(B) a pro rata share of 50 percent, if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(4)(A) For purposes of the Internal Revenue Code of 1954, payments to a former spouse under this section shall be treated as income to the former spouse and not to the participant.

(B) Any reduction in payments to a participant or former participant as a result of payments to a former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and

(ii) any reduction in the annuity of the participant to provide survivor benefits under this subchapter.

(5) Notwithstanding subsection (a)(1) , in the case of any former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date the participant would qualify, on the basis of his or her creditable service, for an annuity under

this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this subchapter which would otherwise be payable to a participant or former participant shall be entitled to make any election regarding method of payment to such former spouse that such participant would have otherwise been entitled to elect, and the participant may elect an alternate method for the remaining share of such benefits. Such elections shall not increase the actuarial present value of benefits expected to be paid under this subchapter.

(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, United States Code, providing for payment of a survivor annuity to any survivor of the former spouse.

(7) The maximum amount payable to any former spouse pursuant to this subsection shall be the difference, if any, between 50 percent of the total benefits authorized to be paid to a former participant by this subchapter, disregarding any apportionment of these benefits to others, and the aggregate amount payable to all others at any one time.

(b)(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this subchapter to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A), such former spouse is entitled to a share, determined under subsection (b)(2), of all survivor benefits that would otherwise be payable under this subchapter to an eligible surviving spouse of the participant.

(2) The share referred to in subsection (b)(1) equals—

(A) 100 percent if such former spouse was married to the participant throughout the entire period of service of the participant which is creditable under this chapter; or

(B) a pro rata share of 100 percent if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(c) A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5, United States Code, or other section relating to the participant's account in the Thrift Savings Plan or annuity under the basic plan that would diminish the entitlement of a former spouse to any benefit granted to the former spouse by this section or in a current spousal agreement.

(d) If a member becomes a participant under this subchapter after qualifying for benefits under subchapter I and, at the time of transfer, has a former spouse entitled to benefits under subchapter I which are determined under section 814 or 815 (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 814 or 815 and the service of the member as a participant under this subchapter is not recognized in determining that pro rata share, then subsections (a) and (b) of this section shall not apply to such former spouse. Otherwise, subsections (a) and (b) of this section shall apply.

(e) If a participant dies after completing at least 18 months of service or a former participant dies entitled to a deferred annuity, but before becoming eligible to receive the annuity, and such participant or former participant has left with the Secretary of State a spousal agreement promising a share of a survivor annuity under subchapter IV, chapter 84, title 5, United States Code, to a former spouse, such survivor annuity shall be paid under the terms of this subchapter as if the survivor annuity had been ordered by a court.

SEC. 862. [22 U.S.C. 4071k] SPOUSAL AGREEMENTS.—A spousal agreement is any written agreement (properly authenticated as determined by the Secretary of State) between a participant or former participant and his or her spouse or former spouse on file with the Secretary of State. A spousal agreement shall be consistent with the terms of this Act and applicable regulations and, if executed at the time a participant or former participant is currently married, shall be approved by such current spouse. It may be used to fix the level of benefits payable under this subchapter to a spouse or former spouse.

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[*Internal References.*—Social Security Act §§202(b), (c), (e), (f), and (g), and 210(a) cite the Foreign Service Act of 1980.]

P.L. 96-481, Approved October 21, 1980 (94 Stat. 2321)
[Small Business Export Expansion Act of 1980]

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Title II—Equal Access to Justice Act

SEC. 201. [5 U.S.C. 504 note] This title may be cited as the "Equal Access to Justice Act".

FINDINGS AND PURPOSE

SEC. 202. [5 U.S.C. 504 note] (a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

(c) It is the purpose of this title—

(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the "American rule" respecting the award of attorney fees.

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EFFECT ON OTHER LAWS

SEC. 206. [28 U.S.C. 2412 note] (a) Except as provided in subsection (b), nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

(b) Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 206(b) of that Act and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.

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EFFECTIVE DATE AND APPLICATION

SEC. 208. [5 U.S.C. 504 note] This title and the amendments made by this title shall take effect of[1] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action.

[*Internal Reference.*—Social Security Act §206(b) has a footnote referring to P.L. 96-481.]

P.L. 96-499, Approved December 5, 1980 (94 Stat. 2599)
Omnibus Reconciliation Act of 1980

[1] As in original. Probably should be "on".

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TITLE IX—MEDICARE AND MEDICAID RELATED PROVISIONS

SHORT TITLE; TABLE OF CONTENTS OF TITLE

SEC. 900. [42 U.S.C. 1305 note] This title may be cited as the "Medicare and Medicaid Amendments of 1980".

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SEC. 915.

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(b) [42 U.S.C. 1395x note] Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act on the day before the date of the enactment of this Act shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.

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RESPONSE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS TO FREEDOM OF INFORMATION ACT REQUESTS

SEC. 928. [42 U.S.C. 1320c-9 note] No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.

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SEC. 952.

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(b) [42 U.S.C. 1395x note] Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.

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TITLE X—OTHER SOCIAL SECURITY ACT PROGRAMS; UNEMPLOYMENT COMPENSATION

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SUBTITLE C—UNEMPLOYMENT COMPENSATION PROVISIONS

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CERTIFICATION OF STATE UNEMPLOYMENT LAWS

SEC. 1025. [26 U.S.C. 3304 note] On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1954, which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle to be included therein, or has with respect to the

12-month period ending on such October 31, failed to comply substantially with any such provision.

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[*Internal References.*—Social Security Act catchlines to §§1838 and 1843 and §§303(e), 1201, 1861(m), (o), and (v) and P.L. 91-373, §202(a) (Vol. II, p. 588) and P.L. 92-603, §222 (Vol. II, p. 613) have footnotes referring to P.L. 96-499.]

P.L. 96-598, Approved December 24, 1980 (94 Stat. 3485)
[Tread Rubber Excise Tax Refunds]

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TREATMENT OF BONNER'S FERRY RESTORIUM UNDER THE SUPPLEMENTARY SECURITY INCOME PROGRAM

SEC. 4. [None assigned.] (a) TREATMENT AS NON-PUBLIC INSTITUTION.—For purposes of title XVI of the Social Security Act, the Boundary County Restorium (popularly known as the Bonner's Ferry Restorium) in Bonner's Ferry, Idaho, shall not be considered a public institution (within the meaning of section 1611(e)(1)(C) of such Act).

(b) EFFECTIVE DATE.—Subsection (a) shall apply to supplemental security income benefits payable under title XVI of the Social Security Act for months beginning with November 1980.

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[*Internal Reference.*—Social Security Act §1611(e) has a footnote referring to P.L. 96-598.]

P.L. 97-35, Approved August 13, 1981 (95 Stat. 483)
Omnibus Budget Reconciliation Act of 1981

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TITLE VI—HUMAN SERVICES PROGRAMS

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Subtitle B—Community Services Block Grant Program

SHORT TITLE

SEC. 671. [42 U.S.C. 9901 note] This subtitle may be cited as the "Community Services Block Grant Act".

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SEC. 673. [42 U.S.C. 9902] For purposes of this subtitle:

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(2) The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on Bureau of the Census data. The Secretary shall revise the poverty line annually (or at any shorter interval the Secretary deems feasible and desirable) which shall be used as a criterion of eligibility in community service block grant programs. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index For All Urban Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever the State determines that it serves the objectives of the block grant established by this subtitle the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) The term "Secretary" means the Secretary of Health and Human Services.

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Title XXI—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH

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Subtitle A—Provisions Relating to Medicare and Medicaid

CHAPTER I—REIMBURSEMENT CHANGES

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ADJUSTMENT IN PAYMENT FOR INAPPROPRIATE HOSPITAL SERVICES

SEC. 2102.

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(b) * * *

(2) [None assigned.] For amendments respecting reimbursement for inappropriate hospital services under medicaid, see section 2173 of this subtitle.

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Subtitle D—Maternal and Child Health Services Block Grant

SHORT TITLE OF SUBTITLE

SEC. 2191. [42 U.S.C. 1305 note] This subtitle may be cited as the "Maternal and Child Health Services Block Grant Act".

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EFFECTIVE DATE; TRANSITION

SEC. 2194. [42 U.S.C. 701 note]

* * * * * * *

(b) * * *

(2)(A) Any grants or contracts entered into under the authorities of the consolidated State programs (as defined in subsection (c)(2)(C)) after the date of the enactment of this subtitle shall permit the termination of such grant or contract upon three months notice by the State in which the grantee or contractor is located.

(B) The Secretary shall not make or renew any grants or contracts under the provisions of the consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the date the State becomes entitled to an allotment of funds under title V of the Social Security Act (as amended by this subtitle).

* * * * * * *

(c) For purposes of this section:

(1) The term "State" has the meaning given such term for purposes of title V of the Social Security Act.

(2)(A) The term "consolidated health programs" has the meaning given such term in section 501(b) of the Social Security Act (as amended by this subtitle).

(B) The term "consolidated Federal programs" means the consolidated health programs—

(i) of special projects grants under sections 503 and 504, and training grants under section 511, of the Social Security Act,

(ii) of grants and contracts for genetic disease projects and programs under section 1101 of the Public Health Service Act, and

(iii) of grants or contracts for comprehensive hemophilia diagnostic and treatment centers under section 1131 of the Public Health Service Act,

as such sections are in effect before the date of the enactment of this subtitle.

(C) The term "consolidated State programs" means the consolidated health programs, other than the consolidated Federal programs.

(d) The provisions of chapter 2 of subtitle C of title XVII of this Act shall not apply to this subtitle (or the programs under the amendments made by this title) and, specifically, section 1745 of this Act shall not apply to financial and compliance audits conducted under section 506(b) of the Social Security Act (as amended by this subtitle).

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TITLE XXIII—PUBLIC ASSISTANCE PROGRAMS

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SUBTITLE C—BLOCK GRANTS FOR SOCIAL SERVICES

SHORT TITLE

SEC. 2351. [42 U.S.C. 1305 note] This subtitle may be cited as the "Social Services Block Grant Act".

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SEC. 2353.

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(b) * * *

(2) [42 U.S.C. 602 note] Sections 402(a)(5), 402(a)(15), and 403(a)(3) of such Act[1] as they apply to the fifty States and the District of Columbia shall be applicable to Puerto Rico, Guam, and the Virgin Islands.

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TITLE XXVI—LOW-INCOME HOME ENERGY ASSISTANCE

SHORT TITLE

SEC. 2601. [42 U.S.C. 8621 note] This title may be cited as the "Low-Income Home Energy Assistance Act of 1981".

HOME ENERGY GRANTS AUTHORIZED

SEC. 2602. [42 U.S.C. 8621] (a) The Secretary of Health and Human Services is authorized to make grants, in accordance with the provisions of this title, to States to assist eligible households to meet the costs of home energy.

(b) There are authorized to be appropriated to carry out the provisions of this title $2,050,000,000 for fiscal year 1987, $2,132,000,000 for fiscal year 1988, $2,218,000,000 for fiscal year 1989, and $2,807,000,000 for fiscal year 1990.

DEFINITIONS

SEC. 2603. [42 U.S.C. 8622] As used in this title:

(1) The term "energy crisis" means weather-related and supply shortage emergencies and other household energy-related emergencies.

(2) the[2] term "household" means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent;[3]

(3) The term "home energy" means a source of heating or cooling in residential dwellings.

(4) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 673(2) of the Community Services Block Grant Act, as applicable to such State.

(5) The term "Secretary" means the Secretary of Health and Human Services.

(6) The term "State" means each of the several States and the District of Columbia.

(7) The term "State median income" means the State median income promulgated by the Secretary in accordance with procedures established under section 2002(a)(6) of the Social Security Act (as such procedures were in effect on the day before the date of the enactment of this Act) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

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[1] Social Security Act.
[2] As in original. Possibly should be "The".
[3] As in original. Possibly should be a period.

STATE ALLOTMENTS

SEC. 2604. [42 U.S.C. 8623] (a)(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the amount appropriated under section 2602(b) for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 2609A and after the amount of allotments for such fiscal year under subsection (b)(1) is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 2609A, if for any period a State has a plan which is described in section 2605(c)(1), the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 2605(b)(9)(B)), with respect to households described in section 2605(b)(2).

(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98-139 shall have their allotments reduced to the extent necessary to ensure that—

(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this title for fiscal year 1984 had been $1,975,000,000, and

(B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.

(3) If the sums appropriated for any fiscal year for making grants under this title are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this title for such fiscal year shall be ratably reduced.

(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.

(b)(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this title on the basis of need among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

(2) Each jurisdiction to which paragraph (1) applies may receive grants under this title upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this title, and which are consistent with the requirements of section 2605.

(c) Of the funds available to each State under subsection (a), a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980, or under this Act, experience in assisting low-income individuals in the area to be served, the capacity to undertake a timely and effective energy crisis intervention program, and the ability to carry out the program in local communities. The program for which funds are reserved under this subsection shall—

(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

(3) require each entity that administers such program—

(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(B) to provide to low-income individuals who are physically infirm the means—

(i) to submit applications for energy crisis benefits without leaving their residences; or

(ii) to travel to the sites at which such application are[4] accepted by such entity.

The preceding sentence shall not apply to a program in a geographical area affected by a natural disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974, for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

(d)(1) If, with respect to any State, the Secretary—

(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this title be made directly to such organization; and

(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this title;

the Secretary shall reserve from amounts which would otherwise be payable to such State from amounts allotted to it under this title for the fiscal year involved the amount determined under paragraph (2).

(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this title for such fiscal year (other than by reason of section 2607(b)(2)) as the number of Indian households described in subparagraphs (A) and (B) of section 2605(b)(2) and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation bears to the number of all households described in subparagraphs (A) and (B) of section 2605(b)(2) in such State, or such greater amount as the Indian tribe and the State may agree upon. In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.

(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to—

(A) the tribal organization serving the individuals for whom such a determination has been made; or

(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this title.

(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meets such criteria as the Secretary may by regulations prescribe.

[(e) Repealed.[5]]

(f) A State may transfer up to 10 percent of the funds payable to it under this section for any fiscal year for its use for such fiscal year under other provisions of Federal law providing block grants for—

(1) support of activities under subtitle B of title VI (relating to community services block grant program);

(2) support of activities under title XX of the Social Security Act; or

(3) support of preventive health services, alcohol, drug, and mental health services, and primary care under title XIX of the Public Health Service Act, and maternal and child health services under title V of the Social Security Act;

or any combination of the activities described in paragraphs (1), (2), and (3). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this title shall be treated as if they were paid to the State under this title but shall not affect the computation of the State's allotment under this title. The State shall inform the Secretary of any such transfer of funds.

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[4]As in original.
[5]P.L. 98-558, §603(c); 98 Stat. 2890.

APPLICATIONS AND REQUIREMENTS

SEC. 2605. [42 U.S.C. 8624] (a)(1) Each State desiring to receive an allotment for any fiscal year under this title shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b).

(2) After the expiration of the first fiscal year for which a State receives funds under this title, no funds shall be allotted to such State for any fiscal year under this title unless such State conducts public hearings with respect to the proposed use and distribution of funds to be provided under this title for such fiscal year.

(b) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to—

(1) use the funds available under this title for the purposes described in section 2602(a) and otherwise in accordance with the requirements of this title, and agrees not to use such funds for any payments other than payments specified in this section;

(2) make payments under this title only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that no household may be excluded from eligibility under this subclause for payments under this title for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year[a]

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or handicapped individuals, or both, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clause (2)(A) and (2)(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that—

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[a]P.L. 98-558, §605(a)(2), added "except that no household may be excluded from eligibility under this subclause for payments under this title for fiscal year 1986 and thereafter if the household has an income which is less than 110 percent of the poverty level for such State for such fiscal year".
As in original. Possibly should be followed by a semicolon.

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) assure that any home energy supplier receiving direct payments agrees not to discriminate, either in the cost of the goods supplied or the services provided, against the eligible household on whose behalf payments are made;

(8) provide assurances that (A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and (B) the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that—

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a fiscal year and not transferred pursuant to section 2604(f) for use under another block grant; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining costs;

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that at least every two years the State shall prepare an audit of its expenditures of amounts received under this title and amounts transferred to carry out the purposes of this title;

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610.

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this title.

(c)(1) As part of the annual application required in subsection (a), the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which—

(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this title, including criteria for designating an emergency under section 2604(c);

(B) describes the benefit levels to be used by the States for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;

(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 2604(c) in the event any portion of the amount so reserved is not expended for emergencies;

(D) describes weatherization and other energy-related home repair the State will provide under subsection (k);

(E) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), and (13) of subsection (b); and

(F) contains any other information determined by the Secretary to be appropriate for purposes of this title.

The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.

(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate review of, and comment upon, such plan or substantial revision.

(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.

(d) The State shall expend funds in accordance with the State plan under this title or in accordance with revisions applicable to such plan.

(e) Each State shall, in carrying out the requirements of subsection (b)(10), obtain financial and compliance audits of any funds which the State receives under this title. Such audits shall be made public within the State on a timely basis. The audits shall be conducted at least every two years by an organization or person independent of any agency administering activities under this title. The audits shall be conducted in accordance with the Comptroller General's standards for audit of governmental organizations, programs, activities, and functions. Within 30 days after completion of each audit, the chief executive officer of the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(f)(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

(g) The State shall repay to the United States amounts found not to have been expended in accordance with this title or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(h) The Comptroller General of the United States shall, from time to time (but not less frequently than every three years), evaluate the expenditures by States of grants under this title in order to assure that expenditures are consistent with the provisions of this title and to determine the effectiveness of the State in accomplishing the purposes of this title.

(i) A household which is described in subsection (b)(2)(A) solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act by reason of being in an institution receiving payments under title XIX of the Social Security Act with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act who is living together with a parent, or the spouse of a parent, of the child.

(j) In verifying income eligibility for purposes of subsection (b)(2)(B), the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under subtitle B of title VI of this Act (relating to community services block grant program), under any other provision of law which carries out programs which were administered under the Economic

Opportunity Act of 1964 before the date of the enactment of this Act, or under other income assistance or service programs (as determined by the State).

(k) Not more than 15 percent of the greater of—

(1) the funds allotted to a State under this title for any fiscal year; or

(2) the funds available to such State under this title for such fiscal year;

may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households.

(l)(1) Any State may use amounts provided under this title for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.

(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.

(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) and suppliers will not be impeded by the use of such data.

NONDISCRIMINATION PROVISIONS

SEC. 2606. [42 U.S.C. 8625] (a) No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 also shall apply to any such program or activity.

(b) Whenever the Secretary determines that a State that has received a payment under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable; or (3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

PAYMENTS TO STATES

SEC. 2607. [42 U.S.C. 8626] (a) From its allotment under section 2604, the Secretary shall make payments to each State in accordance with section 203 of the Intergovernmental Cooperation Act of 1968, for use under this title.

(b)(1) If—

(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 2604 for any fiscal year will not be used by such State during such fiscal year;

(B) the Secretary—

(i) notifies the chief executive officer of such State; and

(ii) publishes a timely notice in the Federal Register;

that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallotted; and

(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year;

then such amount shall be treated by the Secretary for purposes of this title as an amount appropriated for the following fiscal year to be allotted under section 2604 for such following fiscal year.

(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this title.

(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 15 percent of the amount payable to such State for such prior fiscal year and not transferred pursuant to section 2604(f). For purposes of the preceding sentence, the amount payable to a State but not transferred by the State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.

(C) The Secretary shall reallot amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.

(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallot funds, and shall publish such decision in the Federal Register.

WITHHOLDING

SEC. 2608. [42 U.S.C. 8627] (a)(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this title and the assurances such State provided under section 2605.

(2) The Secretary shall respond in an expeditious and speedy manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this title or the assurances provided by the State under section 2605. For purposes of this paragraph, a violation of any one of the assurances contained in section 2605(b) that constitutes a disregard of such assurance shall be considered a serious complaint.

(b)(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this title in order to evaluate compliance with the provisions of this title.

(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this title by such State in order to ensure compliance with the provisions of this title.

(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this title by a State in order to ensure compliance with the provisions of this title.

(c) Pursuant to an investigation conducted under subsection (b), a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) In conducting any investigation under subsection (b), the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

LIMITATION ON USE OF GRANTS FOR CONSTRUCTION

SEC. 2609. [42 U.S.C. 8628] Grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

TECHNICAL ASSISTANCE AND TRAINING

SEC. 2609A. [42 U.S.C. 8628a] (a) Of the amounts appropriated under section 2602(b) for any fiscal year, not more than $500,000 of such amounts may be reserved by the Secretary—

(1) to make grants to State and public agencies and private nonprofit organizations; or

(2) to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations;

to provide for training and technical assistance related to the purposes of this subtitle, including collection and dissemination of information about programs and projects assisted under this subtitle, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this title.

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

STUDIES

SEC. 2610. [42 U.S.C. 8629] (a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including—

(1) information concerning home energy consumption;

(2) the amount, cost and type of fuels used for households eligible for assistance under this title;

(3) the type of fuel used by various income groups;

(4) the number and income levels of households assisted by this title;

(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or handicapped; and

(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this title.

Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) with respect to the prior fiscal year, and a report that describes for the prior fiscal year—

(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 2605(b); and

(2) the impact of each State's program on recipient and eligible households.

REPEALER

SEC. 2611. [42 U.S.C. 8601 note] Effective October 1, 1981, the Home Energy Assistance Act of 1980 is repealed.

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[*Internal References.*—Social Security Act §§202(i), 501(b), 1902(l) and (m), 1905(p), 1916(c), 1924(d), and 1925(b) cite the Omnibus Budget Reconciliation Act of 1981, §§501(b) and 505(2) cite the Maternal and Child Health Services Block Grant (date of enactment) - (Title XXI of P.L. 97-35); Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), and P.L. 88-525, §5(e) and the catchlines for §§1612(b) and 1613(a) have footnotes referring to P.L. 97-35.]

P.L. 97-123, Approved December 29, 1981 (95 Stat. 1659)
[Amendments to P.L. 97-35]

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SEC. 3.

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(e) [26 U.S.C. 3121 note] For purposes of applying section 209 of the Social Security Act, section 3121(a) of the Internal Revenue Code of 1954, and section 3231(e) of such Code with respect to the parenthetical matter contained in section 209(b)(2)[1] of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1954, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service.

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[*Internal Reference.*—Social Security Act §209(b) has a footnote referring to P.L. 97-123.]

P.L. 97-248, Approved September 3, 1982 (96 Stat. 324)
Tax Equity and Fiscal Responsibility Act of 1982

[1] P.L. 98-21, §324(c)(3)(A), redesignated §209(b)(2) as §209(b)(1).

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ELIMINATION OF PRIVATE ROOM SUBSIDY

SEC. 111. (a) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act, not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

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SEC. 114. [42 U.S.C. 1395mm note] * * *

(c)(1) Subject to paragraph (2), the amendment made by subsection (a) shall apply with respect to services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

(i) the individual requests at any time that the amendment apply, or

(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if —

(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

(ii) on the date of the enactment of this Act the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act (as amended by this Act, other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act (as amended by this Act), but (except as provided in subparagraph (A))—

(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

(ii) no payment may be made under section 1876 of such Act with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act (as amended by this Act).

(C) For purposes of this paragraph, the term "current, nonrisk medicare enrollee" means, with respect to an organization, an individual who on the initial effective date—

(i) is enrolled with that organization under an existing cost contract, and

(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act.

(D) For purposes of this paragraph, the term "new medicare enrollee" means, with respect to an organization, an individual who—

(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act, and

(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title.

(E) The preceding provisions of this paragraph shall not to[1] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

(3) For purposes of this subsection:

(A) The term "existing cost contract" means a contract which is entered into under section 1876 of the Social Security Act, as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act, and which is not an existing risk-sharing contract or an existing demonstration project.

(B) The term "existing risk-sharing contract" means a contract entered into under section 1876(i)(2)(A) of the Social Security Act, as in effect before the initial effective date.

(C) The term "existing demonstration project" means a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, relating to the provision of services for which payment may be made under title XVIII of the Social Security Act.

(D) The term "new risk-sharing contract" means a contract entered into under section 1876(g) of the Social Security Act, as amended by this Act.

(E) The term "reasonable cost reimbursement contract" means a contract entered into under section 1876(h) of such Act, as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act.

(4) As used in this section, the term "initial effective date" means—

(A) the first day of the thirteenth month which begins after the date of the enactment of this Act, or

(B) the first day of the first month after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act, as amended by this Act) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later.

(d) The Secretary of Health and Human Services shall conduct a study of the additional benefits selected by eligible organizations pursuant to section 1876(g)(2) of the Social Security Act, as amended by subsection (a) of this section. The Secretary shall report to the Congress within 24 months of the initial effective date (as defined in subsection (c)(4)) with respect to the findings and conclusions made as a result of such study.

(e) The Secretary of Health and Human Services shall conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act. Such study may be coordinated with the study provided for under section 2178(d) of the Omnibus Budget Reconciliation Act of 1981. In conducting such study, the Secretary shall place special emphasis on the quantity and quality of medical care provided in such organizations and the quality of such care when provided on a fee-for-service basis. The Secretary shall submit an interim report to the Congress, within two years after the initial effective date (as defined in subsection (c)(4)), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

SEC. 115. * * *

(b) [42 U.S.C. 1395y note] No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) or section 1903(i)(5) of the Social Security

[1] As in original.

Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981, or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act and specifically states that such provision is to supersede this section.

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AUDIT AND MEDICAL CLAIMS REVIEW

SEC. 118. [42 U.S.C. 1395h note] In addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act, there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments, consistent with the provisions of sections 1816 and 1842 of the Social Security Act.

PRIVATE SECTOR REVIEW INITIATIVE

SEC. 119. [42 U.S.C. 1395cc note] (a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

(b) [42 U.S.C. 1395cc note] Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act, such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title, from collecting any payments from beneficiaries unless otherwise provided under such title.

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PART II—CHANGES IN BENEFITS, PREMIUMS, AND ENROLLMENT

MEDICARE COVERAGE OF FEDERAL EMPLOYEES

SEC. 121. [None assigned.] For provisions providing certain employees of the United States and instrumentalities thereof with entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act, see section 278 of this Act.

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SEC. 122. * * *

(i) [42 U.S.C. 1395b-1 note] (1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

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Subtitle C—Utilization and Quality Control Peer Review

SEC. 141. [42 U.S.C. 1305 note] This subtitle may be cited as the "Peer Review Improvement Act of 1982".

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EXCLUSION FROM INCOME

SEC. 159. [42 U.S.C. 602 note] Notwithstanding any other provision of law, payments which are made, under a statutorily established State program, to meet certain needs of children receiving aid under the State's plan approved under part A of title IV of the Social Security Act, if—

(1) the payments are made to such children by the State agency administering such plan, but are made without Federal financial participation (under section 403(a) of such Act or otherwise), and

(2) the State program has been continuously in effect since before January 1, 1979,

shall be excluded from the income of such children and their families for purposes of section 402(a)(17) of such Act, and for all the other purposes of such part A and of such plan, effective on the date of the enactment of this Act.

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SEC. 278. * * *

(d) [42 U.S.C. 426 note] TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.

(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1) of this subsection,

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

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TITLE VI—FEDERAL SUPPLEMENTAL COMPENSATION PROGRAM

Subtitle A—Extension of Benefits[2]

SHORT TITLE

SEC. 601. [26 US.C. 3304 note] This subtitle may be cited as the "Federal Supplemental Compensation Act of 1982".

FEDERAL-STATE AGREEMENTS

SEC. 602. [26 U.S.C. 3304 note] (a) Any State which desires to do so may enter into and participate in an agreement with the Secretary of Labor (hereinafter in this title referred to as the "Secretary") under this subtitle. Any State which is a party to an agreement under this subtitle may, upon providing thirty days' written notice to the Secretary, terminate such agreement.

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[2]See P.L. 98-13, "Federal Supplemental Compensation Act of 1982—Prevention of Temporary Termination", with respect to weeks beginning after March 31, 1983; Vol. II, p. 763.

See P.L. 98-21, "Social Security Amendments of 1983", §503, with respect to the effective date of certain changes made by that law and with respect to certain modifications in agreements with the States under §602 of the "Federal Supplemental Compensation Act of 1982".

See P.L. 98-92, "Federal Supplemental Compensation Act of 1982, Amendment", §1(c), with respect to an account established before the week beginning June 5, 1983, and §1(d), with respect to an individual who exhausted his rights to Federal supplemental compensation before the first week beginning after September 2, 1983; Vol. II, p. 768.

See P.L. 98-135, "Federal Supplemental Compensation Amendments of 1983", §103(b), with respect to an individual who exhausted his rights to Federal supplemental compensation before the first week beginning after October 18, 1983; §103(c), with respect to certain modifications in agreements with the States under §602 of the "Federal Supplemental Compensation Act of 1982"; and §103(d), with respect to determining whether any period is in effect during weeks beginning after October 18, 1983.

(b) Any such agreement shall provide that the State agency of the State will make payments of Federal supplemental compensation—

(1) to individiuals[3] who—

(A) have exhausted all rights to regular compensation under the State law;

(B) have no rights to compensation (including both regular compensation and extended compensation) with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (and is not paid or entitled to be paid any additional compensation under any such State or Federal law); and

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada;

(2) for any week of unemployment which begins in the individual's period of eligibility,

except that no payment of Federal supplemental compensation shall be made to any individual for any week of unemployment which begins more than two years after the end of the benefit year for which he exhausted his rights to regular compensation.

(c) For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted his rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period; or

(B) his rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) For purposes of any agreement under this subtitle—

(1) the amount of the Federal supplemental compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to him during his benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for extended compensation and to the payment thereof shall apply to claims for Federal supplemental compensation and the payment thereof; except where inconsistent with the provisions of this subtitle or with the regulations of the Secretary promulgated to carry out this subtitle; and

(3) the maximum amount of Federal supplemental compensation payable to any individual for whom an account is established under subsection (e) shall not exceed the lesser of (A) the amount established in such account for such individual, or (B) in the case of an individual filing a claim under the interstate benefit payment plan for Federal supplemental compensation, the amount which would have been established in such account if the amount established in such account were determined by reference to the applicable limit under subparagraph (A)(ii) of subsection (e)(2) applicable in the State in which the individual is filing such interstate claim under the interstate benefit payment plan for the week in which he is filing such claim.

Solely for purposes of paragraph (2), the amendment made by section 2404(a) of the Omnibus Budget Reconciliation Act of 1981 shall be deemed to be in effect for all weeks beginning on or after September 12, 1982.

(e)(1) Any agreement under this subtitle with a State shall provide that the State will establish, for each eligible individual who files an application for Federal supplemental compensation, a Federal supplemental compensation account with respect to such individual's benefit year.

(2)(A)(i) Except as provided in subparagraph (B), the amount established in such account shall be equal to the lesser of—

(I) 55 per centum of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

(II) the applicable limit times his average weekly benefit amount for his benefit year.

(ii) For purposes of clause (i)—

(I) in the case of an account from which Federal supplemental compensation was payable to an individual for a week beginning before October 19, 1983, the applicable limit shall be the applicable limit in effect in the State under this paragraph (as in effect on the day before the date of the enactment of the Federal Supplemental Compensation Amendments of 1983) for the last week beginning before October 19, 1983, or

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[3]As in original. Should be "individuals".

(II) in the case of an account from which Federal supplemental compensation is first payable for a week beginning after October 18, 1983, the applicable limit shall be the applicable limit determined under the following table with respect to the first week for which Federal supplemental compensation is payable from such account:

In the case of weeks during a:	The applicable limit is:
6-percent period	14
5-percent period	12
4-percent period	10
Low-unemployment period	8.

(B) In the case of any account from which Federal supplemental compensation was first payable for a week which begins after March 31, 1983, and before October 19, 1983, the amount established in such account under subparagraph (A) shall be increased by the individual's additional entitlement. In no event shall such increase result in the individual's receiving more Federal supplemental compensation for weeks beginning after October 18, 1983, than the subparagraph (A) entitlement.

(C) For purposes of subparagraph (B) and this subparagraph—

(i) The term "additional entitlement" means the lesser of—

(I) 3/4 of the subparagraph (A) entitlement, or

(II) the individual's average weekly benefit amount for the benefit year multiplied by the applicable limit determined under clause (ii).

(ii) The applicable limit determined under this clause is—

(I) 5 if all of the amount in the individual's Federal supplemental compensation account (determined without regard to subparagraph (B)) is payable to the individual for weeks beginning before October 18, 1983, and

(II) in the case of an individual not described in subclause (I), 4 (2 if the State is in a 4-percent period or a low-unemployment period for the first week beginning after October 18, 1983).

(iii) The term "subparagraph (A) entitlement" means the amount which would have been established in the account if Federal supplemental compenstion were first payable from such account for the first week beginning after October 18, 1983.

(3)(A) For purposes of this subsection, the terms "6-percent period", "5-percent period", "4-percent period", and "low-unemployment period", mean, with respect to any State, the period which—

(i) begins with the third week after the first week for which the applicable trigger is on, and

(ii) ends with the second week after the first week for which the applicable trigger is off.

(B)(i) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is on for any week if—

(I) the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range, or

(II) the rate of insured unemployment in the State for the period consisting of the last week beginning in the second calendar quarter ending before the week for which the trigger determination is being made and all weeks preceding such last week which began on or after January 1, 1982, equals or exceeds 5.5 percent in the case of a 6-percent period (or, in the case of a 5-percent period, equals or exceeds 4.5 percent but is less than 5.5 percent).

Subclause (II) shall not apply in the case of a 4-percent period or low-unemployment period.

(ii) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is off for any week if subclause (I) of clause (i) is not satisfied (or in the case of a 6-percent period or a 5-percent period, both subclauses (I) and (II) of clause (i) are not satisfied).

(iii) In the case of any 5-percent period, 4-percent period, or low-unemployment period, as the case may be, notwithstanding clauses (i) and (ii), the applicable trigger shall be off for any week if the applicable trigger for a period with a higher applicable limit is on for such week.

(C) For purposes of this paragraph, the applicable range is as follows:

In the case of a:	The applicable range is:
6-percent period	A rate equal to or exceeding 6 percent.
5-percent period	A rate equal to or exceeding 5 percent but less than 6 percent.

In the case of a:	The applicable range is:
4-percent period	A rate equal to or exceeding 4 percent but less than 5 percent.
Low-unemployment period	A rate less than 4 percent.

(D)(i) No 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, which is in effect for the first week beginning after October 18, 1983, or any week thereafter, shall last for a period of less than 13 weeks beginning after October 18, 1983.

(ii) The applicable limit in any State shall not be reduced or increased by more than 2 during any 13-week period beginning with the week for which such a reduction (or increase) would otherwise take effect. The preceding sentence shall not apply to any increase (or decrease) which takes effect for the first week beginning after October 18, 1983.

(E) For purposes of this subsection—

(i) The rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970; except that, for purposes of determining the rate of insured unemployment for the period described in subparagraph (B)(i)(II), the rate of insured unemployment shall be determined by reference to the average monthly covered employment under the State law for so much of such period as does not fall in the last 6 months thereof.

(ii) The amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act.

(4) The amount of Federal supplemental compensation payable to an eligible individual shall not exceed the amount in such individual's account established under this subsection.

(5)(A) Except as provided in subparagraph (B), the maximum amount of Federal supplemental compensation payable to an individual shall not be reduced by reason of any trade readjustment allowance to which the individual was entitled under the Trade Act of 1974.

(B) If an individual received any trade readjustment allowance under the Trade Act of 1974 in respect of any benefit year, the maximum amount of Federal supplemental compensation payable under this subtitle in respect of such benefit year shall be reduced (but not below zero) so that (to the extent possible by making such a reduction) the aggregate amount of—

(i) regular compensation,

(ii) extended compensation,

(iii) trade readjustment allowances, and

(iv) Federal supplemental compensation,

payable in respect of such benefit year does not exceed the aggregate amount which would have been so payable had the individual not been entitled to any trade readjustment allowance.

(f)(1) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning before whichever of the following is the later:

(A) the week following the week in which such agreement is entered into; or

(B) September 12, 1982.

(2)(A) Except as provided in subparagraph (B), no Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after March 31, 1985.

(B) In the case of any individual who is receiving Federal supplemental compensation for the week which includes March 31, 1985, such compensation shall continue to be payable to such individual in accordance with subsection (e) for any week thereafter, in a period of consecutive weeks for each of which he meets the eligibility requirements of this Act.

(g) The payment of Federal supplemental compensation shall not be denied to any recipient (who submits documentation prescribed by the Secretary) for any week because the recipient is in training or attending an accredited educational institution on a substantially full-time basis, or because of the application of State law to any such recipient relating to the availability for work, the active search for work, or the refusal to accept work on account of such training or attendance, unless the State agency determines that such training or attendance will not improve the opportunities for employment of the recipient.

PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF FEDERAL SUPPLEMENTAL COMPENSATION

SEC. 603. [26 U.S.C. 3304 note] (a) There shall be paid to each State which has entered into an agreement under this subtitle an amount equal to 100 per centum of the Federal supplemental compensation paid to individuals by the State pursuant to such agreement.

(b) No payment shall be made to any State under this section in respect to compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this subtitle or chapter 85 of title 5 of the United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this subtitle in respect of such compensation.

(c) Sums payable to any State by reason of such State's having an agreement under this subtitle shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subtitle for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

FINANCING PROVISIONS

SEC. 604. [26 U.S.C. 3304 note] (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this subtitle.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

(b) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, such sums as may be necessary to carry out the purposes of this subtitle. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

(c) There are hereby authorized to be appropriated from the general fund of the Treasury, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this subtitle.

DEFINITIONS

SEC. 605. [26 U.S.C. 3304 note] For purposes of this subtitle—

(1) the terms "compensation", "regular compensation", "extended compensation", "base period", "benefit year", "State", "State agency", "State law", and "week" shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term "period of eligibility" means, with respect to any individual, any week which begins on or after September 12, 1982, and begins before April 1, 1985; except that an individual shall not have a period of eligibility unless—

(A) his benefit year ends on or after June 1, 1982, or

(B) such individual was entitled to extended compensation for a week which begins on or after June 1, 1982.

FRAUD AND OVERPAYMENTS

SEC. 606. [26 U.S.C. 3304 note] (a)(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal supplemental compensation under this subtitle to which he was not entitled, such individual—

(A) shall be ineligible for further Federal supplemental compensation under this subtitle in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) In the case of individuals who have received amounts of Federal supplemental compensation under this subtitle to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such Federal supplemental compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(i) the payment of such Federal Supplemental compensation was without fault on the part of any such individual, and

(ii) such repayment would be contrary to equity and good conscience.

(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any Federal supplemental compensation payable to such individual under this subtitle or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the three-year period after the date such individuals received the payment of the Federal supplemental compensation to which they were not entitled, except that no single deduction may exceed 50 per centum of the weekly benefit amount from which such deduction is made.

(C) No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

[*Internal References.*—Social Security Act §1153(a) cites the Peer Review Improvement Act of 1982 (Title I; Subtitle C of P.L. 97-248). The catchlines to titles III and XVIII, and §§202, 223, 226, 226A, title IV, Part A (at §401) and Part D (at §451), 905, title XVIII, Part A (at §1811), 1815, 1816, 1842, 1866, 1871, 1876, 1879, and 1886, and at §§402(a); 403(i); 1814(i); 1842(b); 1861(v) and (dd); 1862(c); 1876(g); and 1887(a) have footnotes referring to P.L. 97-248.]

P.L. 97-253, Approved September 8, 1982 (96 Stat. 763)
Omnibus Budget Reconciliation Act of 1982

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TITLE III—CIVIL SERVICE PROGRAMS AND GOVERNMENT OPERATIONS

Subtitle A—Civil Service Programs

* * * * * * *

RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

SEC. 307. [5 U.S.C. 8332 note] (a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act[1] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors' insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act) for service referred to in section 210(l) of

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[1]September 8, 1982.

such Act (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act) for each such year, and

(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act) and all self-employment income (within the meaning of section 211(b) of such Act) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1)) for each such year.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

(d) For purposes of this section, the term "determination month" means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor); or

(2) October 1982, in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section.

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[*Internal Reference.*—The catchline to Social Security Act §1106 has a footnote referring to P.L. 97-253.]

P.L. 97-276, Approved October 2, 1982 (96 Stat. 1186)
[Continuing Appropriations for Fiscal Year 1983][1]

* * * * * * *

SEC. 157-158. [None assigned.] Since the United States Congress established the Social Security system in 1935 to provide for the general welfare by establishing a system of Federal old-age benefits; and

Since Medicare was made part of the Social Security system by Act of Congress in 1965 to provide for the general welfare through a system of health benefits for the aged; and

Since medicare[2] is an insurance program in which working Americans contribute their Social Security payroll taxes and in which the elderly and disabled pay health insurance premiums in order to receive health benefits promised under this insurance plan; and

Since proposals to limit eligibility for Medicare health benefits to lower-income persons would profoundly alter the character of health insurance for the aged and disabled by removing the insurance principle from the Medicare program.

It is the sense of the Senate that the Congress should reject any proposal to impose a "means test" on eligibility for the Medicare program or benefits provided by the Medicare program.

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[*Internal Reference.*—P.L. 97-248, §135, has a footnote referring to P.L. 97-276.]

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[1]See P.L. 98-369, "Deficit Reduction Act of 1984", §2637, with respect to the payment schedule for reimbursement of certain back claims due the States; Vol. II, p. 777.

[2]As in original. Probably should be capitalized.

P.L. 97-300, Approved October 13, 1982 (96 Stat. 1322)
Job Training Partnership Act

* * * * * * *

STATEMENT OF PURPOSE

SEC. 2. [29 U.S.C. 1501] It is the purpose of this Act to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.

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DEFINITIONS

SEC. 4. [29 U.S.C. 1503] For the purposes of this Act, the following definitions apply:

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(2) The term "administrative entity" means the entity designated to administer a job training plan under section 103(b)(1)(B).

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(5) The term "community-based organizations" means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and organizations serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

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(21) The term "Secretary" means the Secretary of Labor.

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ESTABLISHMENT OF PRIVATE INDUSTRY COUNCIL

SEC. 102. [29 U.S.C. 1512] (a) There shall be a private industry council for every service delivery area established under section 101, to be selected in accordance with this subsection. Each council shall consist of—

(1) representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility; and

(2) representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

(b) The Chairman of the council shall be selected from among members of the council who are representatives of the private sector.

(c)(1)(A) Private sector representatives on the council shall be selected from among individuals nominated by general purpose business organizations after consulting with, and receiving recommendations from, other business organizations in the service delivery area. The number of such nominations shall be at least 150 percent of the number of individuals to be appointed under subsection (a)(1). Such nominations, and

the individuals selected from such nominations, shall reasonably represent the industrial and demographic composition of the business community. Whenever possible, at least one-half of such business and industry representatives shall be representatives of small business, including minority business.

(B) For the purpose of this paragraph, the term—

(i) "general purpose business organizations" means organizations which admit to membership any for-profit business operating within the service delivery area; and

(ii) "small business" means private for-profit enterprises employing 500 or fewer employees.

(2) Education representatives on the council shall be selected from among individuals nominated by local educational agencies, vocational education institutions, institutions of higher education, or general organiations of such agencies or institutions, and by private and proprietary schools or general organizations of such schools, within the service delivery area.

(3) The remaining members of the council shall be selected from individuals recommended by interested organizations. Labor representatives shall be recommended by recognized State and local labor organizations or appropriate building trades councils.

(d)(1) In any case in which there is only one unit of general local government with experience in administering job training programs within the service delivery area, the chief elected official of that unit shall appoint members to the council from the individuals nominated or recommended under subsection (c).

(2) In any case in which there are two or more such units of general local government in the service delivery area, the chief elected officials of such units shall appoint members to the council from the individuals so nominated or recommended in accordance with an agreement entered into by such units of general local government. In the absence of such an agreement, the appointments shall be made by the Governor from the individuals so nominated or recommended.

(e) The initial number of members of the council shall be determined—

(1) by the chief elected official in the case described in subsection (d)(1),

(2) by the chief elected officials in accordance with the agreement in the case described in subsection (d)(2), or

(3) by the Governor in the absence of such agreement.

Thereafter, the number of members of the council shall be determined by the council.

(f) Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council shall be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(g) The Governor shall certify a private industry council if the Governor determines that its composition and appointments are consistent with the provisions of this subsection. Such certification shall be made or denied within 30 days after the date on which a list of members and necessary supporting documentation are submitted to the Governor. When the Governor certifies the council, it shall be convened within 30 days by the official or officials who made the appointments to such council under subsection (d).

(h) In any case in which the service delivery area is a State, the State job training coordinating council or a portion of such council may be reconstituted to meet the requirements of this section.

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SEC. 106. [29 U.S.C. 1516] PERFORMANCE STANDARDS.

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(e)

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(2) The Secretary shall—

(A) provide improved information and technical assistance on performance standards adjustments;

(B) collect data that better specifies hard-to-serve individuals and long-term welfare dependency; and

(C) provide guidance on setting performance goals at the service provider level that encourages increased service to the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.

The Secretary shall also reexamine performance standards to ensure that such standards provide maximum flexibility in serving the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.[1]

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GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN

SEC. 121. [29 U.S.C. 1531] (a)(1) The Governor shall annually prepare a statement of goals and objectives for job training and placement programs within the State to assist in the preparation of the plans required under section 104 of this Act and section 8 of the Act of June 6, 1933 (known as the Wagner-Peyser Act).

(2) Any State seeking financial assistance under this Act shall submit a Governor's coordination and special services plan for two program years to the Secretary describing the use of all resources provided to the State and its service delivery areas under this Act and evaluating the experience over the preceding two years.

(b)(1) The plan shall establish criteria for coordinating activities under this Act (including title III) with programs and services provided by State and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, programs for the homeless, postsecondary institutions, economic development agencies, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State. Such criteria shall not affect local discretion concerning the selection of eligible participants or service providers in accordance with the provisions of sections 107 and 203.

(2) The plan shall describe the projected use of resources, including oversight and support activities, priorities and criteria for State incentive grants, and performance goals for State supported programs.

(3) The State plan shall include a description of the manner in which the State will encourage the successful carrying out of—

(A) training activities for eligible individuals whose placement is the basis for the payment to the State of the incentive bonus authorized by title V; and

(B) the training services, outreach activities, and preemployment supportive services furnished to such individuals.[2]

(4)[3] The Governor shall report to the Secretary the adjustments made in the performance standards and the factors that are used in making the adjustments.

(5)[4] If major changes occur in labor market conditions, funding, or other factors during the two-year period covered by the plan, the State shall submit a modification to the Secretary describing these changes.

(c) Governor's coordination and special services activities may include—

(1) making available to service delivery areas, with or without reimbursement and upon request, appropriate information and technical assistance to assist in developing and implementing plans and programs;

(2) carrying out special model training and employment programs and related services (including programs receiving financial assistance from private sources);

(3) providing programs and related services for offenders, homeless individuals and other individuals whom the Governor determines require special assistance;

(4) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas:

(5) providing training opportunities in the conservation and efficient use of energy, and the development of solar energy sources as defined in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974;

(6) industry-wide training;

(7) activities under title III of this Act;

(8) developing and providing to service delivery areas information on a State and local area basis regarding economic, industrial, and labor market conditions;

(9) providing preservice and inservice training for planning, management, and delivery staffs of administrative entities and private industry councils, as well as contractors for State supported programs; and

(10) providing statewide programs which provide for joint funding of activities under this Act with services and activities under other Federal, State, or local employment-related programs, including Veterans' Administration programs.

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[1] P.L. 100-628, §713(b), added paragraph (2).
[2] P.L. 100-628, §714(c)(2), added this paragraph (3).
[3] P.L. 100-628, §714(c)(1), redesignated paragraph (3) as paragraph (4).
[4] P.L. 100-628, §714(c)(1), redesignated paragraph (4) as paragraph (5).

(d) A Governor's coordination and special services plan shall be approved by the Secretary unless the Secretary determines that the plan does not comply with specific provisions of this Act.

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BENEFITS

SEC. 142. [29 U.S.C. 1552] (a) Except as otherwise provided in this Act, the following provisions shall apply to all activities financed under this Act:

(1) A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.

(2) Individuals in on-the-job training shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

(3) Individuals employed in activities authorized under this Act shall be paid wages which shall not be less than the highest of (A) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, (B) the minimum wage under the applicable State or local minimum wage law, or (C) the prevailing rates of pay for individuals employed in similar occupations by the same employer.

(b) Allowances, earnings and payments to individuals participating in programs under this Act shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than programs under the Social Security Act.

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SEC. 172. [29 U.S.C. 1583] CONSTRUCTION.

(a) ELIGIBILITY.—Nothing in this Act shall be construed to limit the right of persons to remain eligible for assistance under title XIX of the Social Security Act, relating to Medicaid pursuant to section 1619(b) of such Act.[5]

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SEC. 202. [29 U.S.C. 1602] WITHIN STATE ALLOCATION.

* * * * * * *

(b)

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(3)(A) Six percent of such allotment of each State for each fiscal year shall be available to carry out subparagraph (B) of this paragraph.

(B) The amount reserved under subparagraph (A) of this paragraph shall be used by the Governor to provide incentive grants for programs exceeding performance standards and incentives for serving increased numbers of hard-to-serve individuals, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income[6]. The incentive grants made under this subparagraph shall be distributed among service delivery areas within the State exceeding their performance standards in an equitable proportion based on the degree by which the service delivery areas exceed their performance standards. If the full amount reserved under subparagraph (A) of this paragraph is not needed to make incentive grants under this subparagraph, the Governor shall use the amount not so needed for technical assistance to service delivery areas in the State. Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than two program years to develop and implement a data collection system to track the postprogram experience of participants under this part.

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[5] P.L. 100-628, §714(e)(1), added §172.
[6] P.L. 100-628, §713(a), amended subparagraph (B).

ALLOWANCES AND SUPPORT

SEC. 429. [29 U.S.C. 1699] (a) The Secretary shall provide enrollees with such personal, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. For the fiscal year ending September 30, 1983, personal allowances shall be established at a rate not to exceed $65 per month during the first six months of an enrollee's participation in the program and not to exceed $110 per month thereafter, except that allowances in excess of $65 per month, but not exceeding $110 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified in this subsection in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

(b) The Secretary shall prescribe rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six months' service in the Job Corps.

(c) The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed, for the fiscal year ending September 30, 1983, $110 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance unless he has remained in the program at least 90 days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee. The Secretary is authorized, pursuant to rules or regulations, to reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(d) Such portion of the readjustment allowance as prescribed by the Secretary may be paid monthly during the period of service of the enrollee directly to a spouse or child of an enrollee, or to any other relative who draws substantial support from the enrollee, and any amount so paid shall be supplemented by the payment of an equal amount by the Secretary.

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APPLICATION OF PROVISIONS OF FEDERAL LAW

SEC. 436. [29 U.S.C. 1706] (a) Except as otherwise provided in this subsection and in section 8143(a) of title 5, United States Code, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(2) For purposes of subchapter I of chapter 81 of title 5, United States Code (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except—

(A) the term "performance of duty" shall not include any act of an enrollee while absent from the assigned post of duty of such enrollee, except while participating in an activity (including an activity while on pass or during travel to or from such post or duty) authorized by or under the direction and supervision of the Job Corps;

(B) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS-2 employee, and sections[7] 8113(a) and (b) of title 5, United States Code, shall apply to enrollees; and

[7]As in original. Should be "section".

(C) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(3) For purposes of the Federal tort claims provisions in title 28, United States Code, enrollees shall be considered employees of the Government.

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EVALUATION

SEC. 454. [29 U.S.C. 1734] (a) The Secretary shall provide for the continuing evaluation of all programs, activities, and research and demonstration projects conducted pursuant to this Act, including their cost-effectiveness in achieving the purposes of this Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by age, sex, race, and national origin, and the adequacy of the mechanism for the delivery of services.

(b) The Secretary shall evaluate the effectiveness of programs authorized under this Act and part C of title IV of the Social Security Act with respect to the statutory goals, the performance standards established by the Secretary, and of increases in employment and earnings for participants, reduced income support costs, increased tax revenues, duration in training and employment situations, information on the post-enrollment labor market experience of program participants for at least a year following their termination from such programs, and comparable information on other employees or trainees of participating employers.

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TITLE V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM[8]

SEC. 501. [29 U.S.C. 1791] STATEMENT OF PURPOSE.

It is the purpose of this title to entitle each State to the payment of a bonus for the successful job placement of certain employable dependent individuals.

SEC. 502. [29 U.S.C. 1791a] DEFINITIONS.

For the purpose of this title—

(1) the term "welfare assistance" means—

(A) cash payments made pursuant to part A of title IV of the Social Security Act (relating to the aid to families with dependent children program);

(B) general welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. (13)), commonly referred to as the Snyder Act; or

(C) cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act;

(2) the term "disability assistance" means benefits offered pursuant to title XVI of the Social Security Act (relating to the supplemental security income program);

(3) the term "long-term recipient" means an individual who has received the benefits described in paragraphs (1) and (2) for 24 months during the 28-month period immediately preceding application for programs offered under this title;

(4) the term "continuous employment" means gainful employment under which wages or salaries are reportable for unemployment insurance purposes, and such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters;

(5) the term "supported employment" has the meaning given such term by section 7(18) of the Rehabilitation Act of 1973; and

(6) the term "Federal contribution" means the amount of the Federal component of cash payments to individuals within the participating State under the programs described in this section, including part A of title IV of the Social Security Act.

SEC. 503. [29 U.S.C. 1791b] ELIGIBILITY FOR INCENTIVE BONUSES.

(a) IN GENERAL.—An individual shall be eligible to be counted for the purpose of this title if—

(1) the individual is—

(A) an eligible long-term recipient described in subsection (b);

(B) an eligible young recipient described in subsection (c);

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[8] P.L. 100-628, §712(a)(3), added Title V.

(C) an eligible blind or disabled recipient described in subsection (d); or
(D) an eligible young blind or disabled recipient described in subsection (e); and
(2) the individual has met the requirements of section 504.

(b) LONG-TERM RECIPIENT.—An eligible long-term recipient is an individual who—
(1) is a long-term recipient of welfare assistance;
(2) is the head of a household; and
(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(c) YOUNG RECIPIENT.—An eligible young recipient is an individual who—
(1) is receiving welfare assistance at the time determination of eligibility is made for programs under this Act;
(2) is the head of a household;
(3) has not attained 22 years of age;
(4) has not completed secondary school or its equivalent; and
(5) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(d) BLIND OR DISABLED RECIPIENT.—An eligible blind or disabled recipient is an individual who—
(1) is blind or disabled;
(2) is a long-term recipient of disability assistance; and
(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this Act.

(e) YOUNG BLIND OR DISABLED RECIPIENT.—An eligible young blind or disabled recipient is an individual who—
(1) is blind or disabled;
(2) is receiving disability assistance at the time determination of eligibility is made for programs under this Act;
(3) has not attained 22 years of age; and
(4) had no marketable or significant work experience during the year preceding such determination of eligibility.

SEC. 504. [29 U.S.C. 1791c] ADDITIONAL ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—An individual described in section 503 may not be considered eligible to be counted for the purpose of payment of an incentive bonus under this title unless such individual—
(1) has successfully participated in education, training, or other activities offered under this Act;
(2) has been placed in (A) unsubsidized, continuous employment or (B) supported employment following such participation;
(3) receives from such employment a wage or income which is greater than or equal to such individual's placement bonus base; and
(4) no longer receives cash benefits provided under the assistance programs described in paragraphs (1) and (2) of section 502, unless receipt of such benefits—
(A) is limited to 1 calendar quarter (or an equivalent period) during the 5 calendar quarters used to determine continuous employment; and
(B) is caused by a termination of employment due to—
(i) a layoff or permanent closure of a plant or facility;
(ii) a relocation of Federal facilities; or
(iii) a natural disaster.

(b) QUALIFIED EARNINGS.—An individual shall be considered to be earning a wage or income which meets the requirements of subsection (a)(3) if, during a period of continuous employment, the individual earns an income reportable for unemployment insurance purposes and does not receive cash benefits under the programs described in section 502.

(c) EDUCATIONAL REQUIREMENTS.—An individual described in section 503(c) or (e) shall be considered to have met the requirements of subsection (a)(1) if the individual no longer receives welfare assistance and—
(1) reenrolls in secondary school or its equivalent and matriculates to the next grade level or its equivalent within 1 year of enrollment;
(2) enrolls in an accredited vocational or technical school not less than full time and is making satisfactory progress in a course of study which can reasonably be expected to lead to employment; or
(3) obtains the equivalent of a secondary school diploma within 12 months following the individual's determination of eligibility for programs offered under this title.

SEC. 505. [29 U.S.C. 1791d] AMOUNT OF INCENTIVE BONUS.

(a) IN GENERAL.—The amount of the incentive bonus paid to each State shall be equal to the sum of—

(1) 75 percent of the placement bonus base for each successful placement in employment of an individual described in section 503;

(2) 75 percent of the placement bonus base for the second continuous year of such employment; and

(3) 75 percent of the placement bonus base for the third continuous year of such employment,

in excess of the number of such placements made in program year 1987 or such other base period as provided by agreement between the Governor and the Secretary.

(b) PLACEMENT BONUS BASE FOR PURPOSES OF SECTION 503(b) AND (c).—For the purpose of this section, the placement bonus base—

(1) for an individual who qualifies under section 503(b) is equal to the sum of the Federal contribution to amounts received by the individual and the family of such individual under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, or under section 412(e) of the Immigration and Nationality Act, relating to cash assistance and medical assistance to refugees, or both, for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

(2) for an individual who qualifies under section 503(c) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(1)(A) for the prior year, under part A of title IV of the Social Security Act, relating to the aid to families with dependent children program, or section 412(e) of the Immigration and Nationality Act relating to cash assistance and medical assistance to refugees.

(c) PLACEMENT BONUS BASE FOR PURPOSES OF SECTION 503(d) AND (e).—For the purpose of this section, the placement bonus base—

(1) for an individual who qualifies under section 503(d) is equal to the sum of the Federal contribution to amounts received by the individual under title XVI of the Social Security Act relating to supplemental security income for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

(2) for an individual who qualifies under section 503(e) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(2) for the prior year under title XVI of the Social Security Act, relating to supplemental security income.

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[*Internal References.*—Social Security Act §§402(a), 407(d), 445(b), 483(a) and (c), and 485(a), (c), and (e) cite the Job Training Partnership Act. The catchlines to Social Security Act titles IV, XVI (SSI), and XIX have footnotes referring to P.L. 97-300.]

P.L. 97-362, Approved October 25, 1982 (96 Stat. 1726)
Miscellaneous Revenue Act of 1982

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SEC. 202. COMPENSATION PAID TO EX-SERVICE MEMBERS CHARGED TO DEPARTMENT OF DEFENSE.

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(b) EFFECTIVE DATE.—

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(2) [5 U.S.C. 8509 note] TREATMENT OF PREVIOUSLY APPROPRIATED FUNDS.—All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which do not have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.

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[*Internal Reference.*—The catchline to Social Security Act §909 has a footnote referring to P.L. 97-362.]

P.L. 97-377, Approved December 21, 1982 (96 Stat. 1830)
[Further Continuing Appropriations for Fiscal Year 1983]

* * * * * * *

SEC. 156. [42 U.S.C. 402 note] (a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month or who meets the requirements for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code[1]; and

(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code,[2] by reason of having such child (or any other child of such member or former member) in her care.

(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 841)); and

(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841)), disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

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[1]P.L. 100-322, §314(1), inserted "or who meets the requirements for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code".

[2]P.L. 100-322, §314(2), inserted ", or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code,".

(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section.

(e)(1) Unless otherwise provided by law—

(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 411 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 411 of such title are increased above the rates as in effect immediately before such increase; and

(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 1731(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 1731(b) of such title are increased above the rates as in effect immediately before such increase.

(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the "Retired Pay, Defense" account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

(h) The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

(i) For the purposes of this section:

(1) The term "head of the agency" means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

(2) The terms "active military, naval, or air service" and "service-connected" have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.

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[*Internal Reference.*—The catchline to Social Security Act §202 has a footnote referring to P.L. 97-377.]

P.L. 97-404, Approved December 31, 1982 (96 Stat. 2026)
[Job Training Partnership Act, Amendments]

. . . . . .

SEC. 6. [42 U.S.C. 602 note] The amendments made by this Act shall not be construed as affecting the term "originally enacted" as applied to the Job Training Partnership Act in section 402(a)(8)(A)(v) of the Social Security Act as amended by section 503(a) of the Act.

. . . . . .

[*Internal Reference.*—Social Security Act §402(a) has a footnote referring to P.L. 97-404.]

P.L. 97-448, Approved January 12, 1983 (96 Stat. 2365)
Technical Corrections Act of 1982

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SEC. 309.

. . . . . .

(d) [42 U.S.C. 1320c note] In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 and part B of title XI of the Social Security Act as amended by such subtitle.

. . . . . .

[*Internal Reference.*—The catchline to Social Security Act title XI, Part B (at §1151) has a footnote referring to P.L. 97-448.]

P.L. 97-455, Approved January 12, 1983 (96 Stat. 2497)
[Temporary Payment of Disability Benefits]

. . . . . .

SEC. 5. [42 U.S.C. 405 note] CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

. . . . . .

[*Internal Reference.*—The catchline to Social Security Act §205 has a footnote referring to P.L. 97-455.]

P.L. 98-4, Approved March 11, 1983 (97 Stat. 7)
Payment-in-Kind Tax Treatment Act of 1983

SECTION 1. [26 U.S.C. 61 note] SHORT TITLE.
This Act may be cited as the "Payment-in-Kind Tax Treatment Act of 1983".

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SEC. 3. [26 U.S.C. 61 note] LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land diverted from the production of an agricultural commodity under a 1983 payment-in-kind program—

(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such land during such crop year.

(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

(1) section 2032A of the Internal Revenue Code of 1954 (relating to valuation of certain farm, etc., real property),

(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

(3) chapter 2 of such Code (relating to tax on self-employment income), and

(4) title II of the Social Security Act (relating to Federal old-age, survivors, and disability insurance benefits).

SEC. 4. [26 U.S.C. 61 note] ANTIABUSE RULES.

(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

(b) QUALIFIED ACQUISITION.—For purposes of this section, the term "qualified acquisition" means any acquisition—

(1) by reason of the death of a qualified transferor,

(2) by reason of a gift from a qualified transferor, or

(3) from a qualified transferor who is a member of the family of the person acquiring the land.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED TRANSFEROR.—The term "qualified transferor" means any person—

(A) who held the land on February 23, 1983, or

(B) who acquired the land after February 23, 1983, in a qualified acquisition.

(2) MEMBER OF FAMILY.—The term "member of the family" has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1954.

(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

SEC. 5. [26 U.S.C. 61 note] DEFINITIONS AND SPECIAL RULES.

(a) GENERAL RULE.—For purposes of this Act—

(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term "1983 payment-in-kind program" means any program for the 1983 crop year—

(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

(i) the diversion of farm acreage from the production of an agricultural commodity, and

(ii) the devotion of such acreage to conservation uses, and

(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

(2) CROP YEAR.—The term "1983 crop year" means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term "1984

crop year" means the crop year for wheat the planting and harvesting period for which occurs during 1984.

(3) QUALIFIED TAXPAYER.—The term "qualified taxpayer" means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from the Commodity Credit Corporation.

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[*Internal References.*—The catchlines to Social Security Act title II and §211(b) have footnotes referring to P.L. 98-4.]

P.L. 98-13, Approved March 29, 1983 (97 Stat. 54)
[Federal Supplemental Compensation Act of 1982—Prevention of Temporary Termination]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [26 U.S.C. 3304 note] That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 shall be applied as if the provisions contained in part A of title V of the conference report on the bill H.R. 1900 were enacted into law on the date of the enactment of this Act.

[*Internal Reference.*—P.L. 97-248, title VI (Vol. II, p. 744) has a footnote referring to P.L. 98-13.]

P.L. 98-21, Approved April 20, 1983 (97 Stat. 65)
Social Security Amendments of 1983

SEC. 101. * * *

(e) [42 U.S.C. 410 note] Nothing in this Act shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.

SEC. 102. * * *

(d) [26 U.S.C. 3121 note] The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1954 may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section apply.

(e)(1) [42 U.S.C. 414 note] If any individual—

(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section, and

(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act) for all of the purposes of title II of such Act.

(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.

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SEC. 111. * * *

(d) [42 U.S.C. 415 note] Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act, the "base quarter" (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a "cost-of-living computation quarter" within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a "cost-of-living computation quarter" under paragraph (2)(A) of such section) for all of the purposes of such Act as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).

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SEC. 121. * * *

(e) [42 U.S.C. 401 note] TRANSFERS TO TRUST FUNDS.—

(1) IN GENERAL.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1954 which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) to payments from such payor fund.

(2) TRANSFERS.—The amounts appropriated by paragraph (1) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PAYOR FUND.—The term "payor fund" means any trust fund or account from which payments of social security benefits are made.

(B) SOCIAL SECURITY BENEFITS.—The term "social security benefits" has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1954.

(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

(B) the anticipated operation of this subsection during the next 5 years.

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SEC. 123.

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(b) * * *

(4) [42 U.S.C. 418 note] DEPOSITS IN SOCIAL SECURITY TRUST FUNDS.—For purposes of subsection (h) of section 218 of the Social Security Act (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1954 (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.

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SEC. 125. [26 U.S.C. 3121 note] TREATMENT OF CERTAIN FACULTY PRACTICE PLANS.

(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1954 (relating to concurrent employment by 2 or more employers)—

(1) the following entities shall be deemed to be related corporations:

(A) a State university which employs health professionals as faculty members at a medical school, and

(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

(i) which employs faculty members of such medical school, and

(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983.

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SEC. 131.

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(d) * * *

(2) [42 U.S.C. 402 note] In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made.

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SEC. 151.

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(b) * * *

(3) [42 U.S.C. 429 note] * * *

(B)(i) Within thirty days after the date of the enactment of this Act, the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.

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SEC. 305.

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(e) [42 U.S.C. 428 note] The Secretary shall increase the amounts specified in section 228 of the Social Security Act, as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.

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SEC. 309.

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(q) * * *

(2) [42 U.S.C. 426 note] For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act, as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted, under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.

SEC. 310. [42 U.S.C. 402 note]

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(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.

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SEC. 601. (a) * * *

(3) [42 U.S.C. 1395ww note] It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.

* * * * * * *

(g) [42 U.S.C. 1395ww note] In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act, the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.

SEC. 602.

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(k) [42 U.S.C. 1395y note] (1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.

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REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS

SEC. 603. (a) [42 U.S.C. 1395ww note] * * *

(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1989) on the impact, of the payment methodology under section 1886(d) of the Social Security Act during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

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(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.

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(b) [42 U.S.C. 1395b-1 note] * * *

(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act approved under section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972, which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.

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(d) [42 U.S.C. 1395b-1 note] The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.

SEC. 604. [42 U.S.C. 1395ww note]

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(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act (as in effect before the date of the enactment of this Act) for items and services furnished before that period.

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[*Internal References.*—Social Security Act §§215(a) and (i), 217(g), 218(f), 229(b), 1618(e), 1634(b), 1845(b), and 1886(c) and (e) cite the Social Security Amendments of 1983. The catchlines to Social Security Act titles II and XVIII and §§201, 202, 228, 1862, and 1886, and §§226(e), 1862(a), 1866(a), and 1886(d) have footnotes referring to P.L. 98-21.]

P.L. 98-64, Approved August 2, 1983 (97 Stat. 365)
[Per Capita Payments to Indians]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 117a] That funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary or the tribe directly to the members involved or, if such members are minors or have been legally determined not competent to handle their own affairs, to a parent or guardian of such members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

SEC. 2. [25 U.S.C. 117b] (a) Funds distributed under this Act shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466)[1], as amended.

(b) Nothing in this Act shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended, or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided*, That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in section 1 of this Act if all other provisions of the 1973 Act are met, including but not limited to, the protection of the interests of minors and incompetents in such funds.

(c) Nothing in this Act, except the provisions of subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

SEC. 3. [25 U.S.C. 117c] (a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to section 1 of this Act and, where approval is given under such regulations, the United States shall not be liable with respect to any distribution of funds by a tribe under this Act.

(b) Nothing in this Act shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-64.]

P.L. 98-92, Approved September 2, 1983 (97 Stat. 608)
[Supplemental Unemployment Benefits—
Temporary Emergency Food
Assistance Act of 1983]

SEC. 1.

* * * * * * *

(c) [26 U.S.C. 3304 note] (1) In the case of an account established before the week beginning June 5, 1983, the applicable limit under section 602(e)(2)(A)(ii) of the Federal Supplemental Compensation Act of 1982 shall in no event be less than the number of weeks applicable to such State for the week beginning March 27, 1983, under section 602(e)(2) of such Act (as in effect for such week) reduced by four.

(2) Paragraph (1) shall apply only to compensation for weeks of unemployment beginning on or after the date of the enactment of this Act.

(d) [26 U.S.C. 3304 note] In the case of any eligible individual who (without regard to the amendment made by subsection (a) or the provisions of subsection (c)) exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after the date of the enactment of this Act, such individual's eligibility for additional compensation by reason of the amendment made by subsection (a) or the provisions of subsection (c) for any week of unemployment shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after the date of the enactment of this Act.

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[*Internal Reference.*—P.L. 97-248, Title VI, has a footnote referring to P.L. 98-92.]

P.L. 98-118, Approved October 11, 1983 (97 Stat. 803)
[Extension of "Federal Supplemental Compensation Act of 1982",
P.L. 97-248, Title VI, Subtitle A]

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[1]See P.L. 93-134, §7, Vol. II, p. 643.

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SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. [26 U.S.C. 3121 note] Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

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[*Internal Reference.*—Social Security Act §209(end) has a footnote referring to P.L. 98-118.]

P.L. 98-168, Approved November 29, 1983 (97 Stat. 1105)
[Amendments to Title 5, U.S.C.]

* * * * * * *

SEC. 201. [5 U.S.C. 8331 note] This title may be cited as the "Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983".

STATEMENT OF POLICY

SEC. 202. [5 U.S.C. 8331 note] It is the policy of the Government—

(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act) or January 1, 1987, whichever is earlier;

(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act until a new Government retirement system covering such employees and officers is established;

(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

DEFINITIONS

SEC. 203. [5 U.S.C. 8331 note] (a) For the purposes of this title—

(1) the term "covered employee" means any individual whose service is covered service;

(2) the term "covered retirement system" means—

(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President;

(3) the term "covered service" means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67); and

(4) the term "new Government retirement system" means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987, and (B) takes effect on or before January 1, 1987.

(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

CONTRIBUTION ADJUSTMENTS

SEC. 204. [5 U.S.C. 8331 note] (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

(1) section 8334 of title 5, United States Code;

(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1987. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987, as the case may be, and is not subject to a new Government retirement system.

(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

SEC. 205. [5 U.S.C. 8331 note] (a) For purposes of this section—

(1) the term "contribution deficiency", when used with respect to a covered retirement system, means the excess of—

(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

(2) the term "appropriate agency head" means—

(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.);

(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987 the appropriate agency head—

(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987 the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

SEC. 206. [5 U.S.C. 8331 note] (a) For the purposes of this section, the term "interim covered service" means covered service to which section 204(a) applies.

(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act to the annuitant and is attributable to such service, as determined under subsection (g).

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who

retires or dies after January 1, 1987, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act to an individual and is attributable to interim covered service shall be determined by—

(1) computing the amount of such benefits including credit for such service;

(2) computing the amount of such benefits, if any, without including credit for such service; and

(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

SEC. 207. [Repealed.[1]]

ELECTIONS BY CERTAIN COVERED EMPLOYEES

SEC. 208. [5 U.S.C. 8331 note] (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act beginning on or before December 31, 1983, may—

(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

(A) to terminate participation in such system, effective after December 31, 1983; or

(B) to remain under such system, as if the preceding sections of this Act and the amendments made by this Act had not been enacted; or

(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act and the amendments made by this Act; or

(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

[1] P.L. 99-335, §309; 100 Stat. 607.

(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act and the amendments made by this Act.

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[*Internal References.*—Social Security Act §201 has a footnote referring to P.L. 98-168. P.L. 99-190, §130(a) (Vol. II, p. 793) and P.L. 99-335, §301(b) (Vol. II, p. 807) cite P.L. 98-168.]

P.L. 98-181, Approved November 30, 1983 (97 Stat. 1153)
Supplemental Appropriations Act, 1984

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CONSIDERATION OF UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

SEC. 221. [42 U.S.C. 602 note] Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part A of title IV of the Social Security Act, any utility payment made in lieu of any rental payment by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937[1] or section 236 of the National Housing Act[2] shall be considered to be a shelter payment.

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[*Internal Reference.*—Social Security Act §402(a)(7) has a footnote referring to P.L. 98-181.]

P.L. 98-369, Approved July 18, 1984 (98 Stat. 494)
Deficit Reduction Act of 1984

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SEC. 2303. * * *

(h) [42 U.S.C. 1395u note] The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.

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(j) [42 U.S.C. 1395l note] (1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

(2) The amendments made by subsection (g)(2) shall apply to payments for calendar quarters beginning on or after October 1, 1984.

(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983. Payment for such services shall be made under part B of title XVIII of the Social Security Act at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act or under the procedure described in section 1870(f)(1) of such Act) of the reasonable

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[1] P.L. 75-412.
[2] P.L. 73-479.

charge for such service. The deductible under section 1833(b) of such Act shall not apply to such tests if payment is made on the basis of such an assignment or procedure.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

SEC. 2304. [42 U.S.C. 1395l note] (a)(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

(i) weekly during the first month after implantation,

(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

(iii) monthly thereafter.

(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.

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SEC. 2305. * * *

(f) [42 U.S.C. 1395l note] The amendments made by this section shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary.

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LESSER OF COST OR CHARGES

SEC. 2308. * * *

(b) [42 U.S.C. 1395f note] (1) For purposes of applying the nominality test under sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.

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SEC. 2312. * * *

(d) [None assigned.] The Secretary of Health and Human Services shall conduct a study of possible methods of reimbursement under title XVIII of the Social Security Act which would not discourage the use of certified registered nurse anesthetists by hospitals. The Secretary shall report the results of such study to the Congress as soon as is practicable.

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PROSPECTIVE PAYMENT WAGE INDEX

SEC. 2316. * * *

(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of

section 1886(d) of the Social Security Act for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.

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PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

SEC. 2320. [42 U.S.C. 1395b-1 note] (a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section, that the State does not want paragraph (1) to apply to that project.

(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide[1] waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act are published.

(b) The project referred to in subsection (a) is the statewide[2] demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603), which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act.

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SEC. 2323. * * *

(e) [42 U.S.C. 1395l note] The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act, and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.

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PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

SEC. 2325. [42 U.S.C. 1395y note] The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act, that payment will not be made under part B of title XVIII of such Act for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.

CONTRACTS FOR MEDICARE CLAIMS PROCESSING

SEC. 2326. (a) [42 U.S.C. 1395h note] During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act, and not more than two contracts under section 1842 of such Act, on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a

[1] As in original. Capitalization questionable.
[2] See footnote 1.

period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).

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SEC. 2338. * * *

(d)(1) [42 U.S.C. 1395r note] The amendment made by subsection (a) shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act.

(2) [42 U.S.C. 1395p note] (A) The amendments made by subsections (b) and (c) shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

(B) For purposes of subparagraph (A), the term "first effective month" means the first month which begins more than 90 days after the date of the enactment of this Act.

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SEC. 2343. * * *

(d) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain "core" services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

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SEC. 2350. (a) * * *

(2) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.

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(b) * * *

(3) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services may not approve the establishment of a stabilization fund by an eligible organization under section 1876(g)(5) of the Social Security Act for any contract period beginning later than September 30, 1990[1].

(4) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services shall report to the Congress with respect to the use of stabilization funds by eligible organizations under section 1876(g)(5) of the Social Security Act, and shall assess the need for such funds. The report shall be submitted not later than 54 months after the month in which this Act is enacted.

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WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

SEC. 2355. [None assigned.] (a) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall approve, with appropriate terms and conditions as defined by the Secretary, applications or protocols submitted for waivers described in subsection (c), and the evaluation of such protocols, in order to carry out such project. Such approval shall be effected not later than 30 days after the date on which the application or protocol for a waiver is submitted or not later than 30 days after the date of the enactment of this Act in the case of an application or protocol submitted before the date of the enactment of this Act.

(b) A project referred to in subsection (a) is a project—

[1] P.L. 100-203, §4013 [as amended by P.L. 100-360, §411(c)(3)], struck out "four years after the date of the enactment of this Act" and substituted "September 30, 1990".

(1) to demonstrate the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1—04 of the University Health Policy Consortium of Brandeis University;

(2) which provides for the integration of health and social services under the direct financial management of a provider of services;

(3) under which all medicare services will be provided by or under arrangements made by the organization at a fixed annual prepaid capitation rate for medicare of 100 percent of the adjusted average per capita cost;

(4) under which medicaid services will be provided at a rate approved by the Secretary;

(5) under which all payors will share risk for no more than two years, with the organization being at full risk in the third year and in succeeding years[4];

(6) which is being provided funds under a grant provided by the Secretary of Health and Human Services; and

(7) with respect to which substantial private funds are being provided other than under the grant referred to in paragraph (5).

(c) The waivers referred to in subsection (a) are appropriate waivers of—

(1) certain requirements of title XVIII of the Social Security Act, pursuant to section 402(a) of the Social Security Amendments of 1967 (as amended by section 222 of the Social Security Amendments of 1972); and

(2) certain requirements of title XIX of the Social Security Act, pursuant to section 1115 of such Act.

(d)(1) The Secretary of Health and Human Services shall submit a preliminary report to the Congress on the status of the projects and waivers referred to in subsection (a) 45 days after the date of the enactment of this Act.

(2) The Secretary shall submit a interim[5] report to the Congress on the projects referred to in subsection (a) not later than 42 months after the date of the enactment of this Act.

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SEC. 2361. * * *

(d) [42 U.S.C. 1396a note] (1) Except as provided in paragraph (2), the amendments made by this section shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

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SEC. 2363. * * *

(c) [42 U.S.C. 1396b note] The amendments made by subsection (a) apply to calendar quarters beginning on or after the date of the enactment of this Act, except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date.

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SEC. 2367. * * *

(c) [42 U.S.C. 1396a note] * * *

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

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[4] P.L. 100-203, §4018(b)(2), inserted "and in succeeding years".
[5] P.L. 100-203, §4018(b)(3), struck out "final" and substituted "interim".
As in original. Should read "an interim".

SEC. 2373. * * *

(c)(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act (including any part of the plan operating pursuant to section 1902(f) of such Act), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

(5) In this subsection, a State plan is considered to include—

(A) any amendment or other change in the plan which is submitted by a State, or

(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).[4]

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SEC. 2601. * * *

(c) [42 U.S.C. 410 note] For purposes of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954, an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(d) [42 U.S.C. 410 note] (1) Any individual who—

(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act), and

(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act applies,

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[4] P.L. 100-93, §9, amended subsection (c) in its entirety.

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act, requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1954 as if the cessation of coverage under title 5 had not occurred.

(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United State Code.

(e) [42 U.S.C. 410 note] (1) For purposes of section 210(a)(5) of the Social Security Act (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1954 (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1954 by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, service described in paragraph (1) which is also "employment" for purposes of title II of the Social Security Act, shall be considered to be "covered service".

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SEC. 2615. * * *

(b) [42 U.S.C. 1320a-6 note] The amendment made by this section shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.

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SEC. 2624. * * *

(b) [42 U.S.C. 602 note] (1) The amendments made by this section shall apply with respect to months beginning on or after October 1, 1984.

(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act as added by subsection (a) of this section) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible to be treated as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

(A) must make its application for such treatment no later than the end of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in the case of any such family the term "last month for which the

family actually received such aid" as used in such section 402(a)(37) means the month before the month in which the family makes such application);

(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid to the time of its application under subparagraph (A), if section 402(a)(8)(A)(iv) of such Act applied; and

(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect.

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[*Internal References.*—Social Security Act §209(e) cites the Tax Reform Act of 1984 (Division A of P.L. 98-369) and §§1845(b) and (e) cite the Deficit Reduction Act of 1984. The catchlines to SSAct titles XVIII and XIX, §§1842, 1862, 1871, and title XVIII, Part A (at §1811) and Part B (at §1831), and §§210(a), 1814(b), 1833(a), 1861(dd), 1876(c) and (g), and 1886(a) and (d) have footnotes referring to P.L. 98-369.]

P.L. 98-378, Approved August 16, 1984 (98 Stat. 1305)
Child Support Enforcement Amendments of 1984

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WISCONSIN CHILD SUPPORT INITIATIVE

SEC. 22. [42 U.S.C.A. 602 note] (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act (hereafter referred to in this section as "dependent children in single-parent families"), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;

(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a)(1) and (2) of such Act;

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

(iii) the amount so advanced under section 455(a) of such Act; and

(iv) the amount so advanced with respect to section 458(a) of such Act,

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a)(1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. [None assigned.] (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

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[*Internal References.*—Social Security Act §455(e) and §458(b) cite the Child Support Enforcement Amendments of 1984. Social Security Act title IV, Part A (at §401); and Part D (at §451) have footnotes referring to P.L. 98-378.]

P.L. 98-432, Approved September 28, 1984 (98 Stat. 1671)
Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [None assigned.] That this Act may be cited as the "Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act".

CONGRESSIONAL FINDINGS

SEC. 2. [None assigned.] The Congress finds that—

(1) there is pending before the United States District Court for the Western District of Washington at Tacoma a civil action numbered C83-167T entitled the "Shoalwater Bay Indian Tribe, a federally recognized Indian tribe against Joe Amador and Jean Amador, et al.", which involves claims to certain privately held lands within the Shoalwater Bay Indian Reservation in Tokeland, Washington, known as Dexter-by-the-Sea and First Addition Dexter-by-the-Sea;

(2) the owners of such lands derive their title from a patent issued by the United States Government to George N. Brown on August 1, 1872, certificate numbered 3763;

(3) the Shoalwater Bay Indian Reservation was established by Executive order of President Andrew Johnson on September 22, 1866, and is alleged to include the lands claimed by the Shoalwater Bay Indian Tribe in such civil action;

(4) in its patent to George N. Brown in 1872, the United States failed to exempt the lands claimed by the Shoalwater Bay Indian Tribe in such civil action from the Shoalwater Bay Indian Reservation established in 1866;

(5) since 1872, such lands have been the subject of disputes claiming dual chains of title in the United States as trustee for the Shoalwater Bay Indian Tribe and the patentee, George N. Brown and his successors in title, the defendants in the civil action;

(6) the pendency of the civil action has placed a cloud on the titles held by residents of Dexter-by-the-Sea and First Addition Dexter-by-the-Sea rendering their property essentially unmarketable; and

(7) a legislative resolution of such civil action is appropriate because the United States Government is responsible for the failure to except the land now known as Dexter-by-the-Sea and First Addition Dexter-by-the-Sea from the patent to George N. Brown in 1872.

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SEC. 4. [None assigned.] (a)(1) If the requirements of subsection (b) of this section are met, the Secretary of the Treasury is authorized and directed in fiscal year 1985 to pay, out of funds in the Treasury of the United States not otherwise appropriated, $1,115,000 directly to the Shoalwater Bay Indian Tribe.

* * * * * * *

(c) None of the funds paid to the Shoalwater Bay Indian Tribe under subsection (a)(1) shall be used to make any per capita distribution to members of such tribe.

SEC. 5. [None assigned.] (a) The Shoalwater Bay Indian Tribe is authorized to utilize the funds paid to the tribe under provisions of this Act for any purpose authorized by ordinance or resolution of the tribe, including investment for economic development purposes.

* * * * * * *

(e) None of the funds or income therefrom distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-432.]

P.L. 98-473, Approved October 12, 1984 (98 Stat. 1837)
[Continuing Appropriations for Fiscal Year 1985]

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Title II

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CHAPTER XII—PROCEDURAL AMENDMENTS

* * * * * * *

PART J—NOTICE ON SOCIAL SECURITY CHECKS

SEC. 1212. [42 U.S.C. 1302 note] (a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act, and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act.

* * * * * * *

[*Internal Reference.*—Social Security Act §205(i) has a footnote referring to P.L. 98-473.]

P.L. 98-500, Approved October 19, 1984 (98 Stat. 2317)
Old Age Assistance Claims Settlement Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 2301 note] That this Act may be cited as the "Old Age Assistance Claims Settlement Act".

DEFINITIONS

SEC. 2. [25 U.S.C. 2301] For purposes of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "unauthorized disbursement" means a disbursement made from the trust estate of a deceased Indian which was made by the Secretary to a State or a political subdivision of a State for the purpose of reimbursing the State or political subdivision for any old age assistance made to the deceased Indian before death in violation of Federal laws governing Indian trust property: *Provided*, That, except for purposes of section 4, the term also includes the reimbursements for welfare payments identified in either the list published on April 17, 1985, at page 15290 of volume 50 of the Federal Register, as modified or amended on November 13, 1985, at page 46835 of volume 50 of the Federal Register, or the list published on March 31, 1983, at page 13698 of volume 48 of the Federal Register, as modified or amended on November 7, 1983, at page 51204 of volume 48 of the Federal Register[1]; and

(3) "trust estate" means that portion of the estate that consists of real or personal property, title to which is held by the United States for the benefit of the Indian or which may not be alienated without the consent of the Secretary.

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[1]P.L. 100-153, §5, inserted a colon and this proviso.

PAYMENT OF CLAIMS

SEC. 3. [25 U.S.C. 2302] (a) The Secretary is authorized and directed to determine the portion of any unauthorized disbursement to which any individual under this Act is entitled, and to pay to such individual the amount which the Secretary determines such individual to be entitled. Any payment under this provision shall include interest at a rate of 5 per centum per annum, simple interest, from the date on which such disbursement was made from the trust estate of the deceased Indian.

* * * * * * *

TREATMENT OF FUNDS

SEC. 8. [25 U.S.C. 2307] Funds distributed under the provisions of this Act shall not be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-500.]

P.L. 98-602, Approved October 30, 1984 (98 Stat. 3149)
[Wyandotte Tribe of Oklahoma]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WYANDOTTE TRIBE OF OKLAHOMA

ABROGATION OF PRIOR PLAN; REPEAL OF PRIOR DISTRIBUTION OF JUDGMENT FUNDS ACT

SEC. 101. [None assigned.] (a) Notwithstanding the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401, et seq.), or any other regulation or plan promulgated by the Secretary pursuant to such Act, the funds appropriated in satisfaction of the judgments awarded to the Wyandotte Tribe of Oklahoma in—

(1) docket numbered 139 before the Indian Claims Commission,
(2) docket numbered 141 before the United States Court of Claims, and
(3) dockets numbered 212 and 213 before the United States Claims Court,

(other than funds appropriated for the payment of attorney fees or litigation expenses) and any interest or investment income accrued or accruing (on or before the date of the allocation of funds pursuant to section 103(b)) on the amount of such judgments shall be used and distributed as provided in this title.

(b) The Act entitled "An Act to provide for the use and distribution of funds to the Wyandotte Tribe of Indians in docket 139 before the Indian Claims Commission and docket 141 before the United States Court of Claims, and for other purposes." and approved December 20, 1982, is hereby repealed.

* * * * * * *

MANNER OF PER CAPITA DISTRIBUTION; TREATMENT OF AMOUNTS PAID OR DISTRIBUTED

SEC. 106. [None assigned.] (a) Any payment of a per capita share of funds to which a living, competent adult is entitled under this title shall be paid directly to such adult.

(b) Any per capita share of funds to which a deceased individual is entitled under this title shall be paid, and the beneficiaries thereof determined, under regulations prescribed by the Secretary.

(c) Any per capita share of funds to which a legally incompetent individual or a minor is entitled under this Act shall be paid in accordance with the requirements of section 3(b)(3) of the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401, et seq.).

(d) None of the funds distributed per capita under this title or made available under this title for any tribal program shall be—

(1) subject to Federal, State, or local income taxes, or

(2) considered as income or resources in determining either eligibility for, or the amount of assistance under—

(A) the Social Security Act, or

(B) in the case of any per capita share of $2,000 or less, any other Federal, State, or local programs.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 98-602.]

P.L. 99-130, Approved October 28, 1985 (99 Stat. 549)
[Mdewakanton and Wahpekute Eastern or Mississippi Sioux]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [None assigned.] (a) That notwithstanding any other law, except as provided in subsection (b) of this section, the funds for awards to the Mdewakanton and Wahpekute Sioux appropriated on January 30, 1981 ($800,000), on October 15, 1982 ($591,058), and one-half of the funds appropriated on March 2, 1981 ($7,500), all in docket numbered 363 before the United States Court of Claims, and the funds appropriated on August 1, 1983 ($3,468,246.48), in docket numbered 363 before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided by the Secretary of the Interior (hereinafter the "Secretary") as follows:

	Percent
(1) Santee Sioux Tribe of Nebraska	58.69
(2) Flandreau Santee Sioux Tribe	15.84
(3) Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota to be divided on the basis of the respective members of each of the three communities, born on or prior to and living on the date of this Act	25.47

* * * * * * *

GENERAL PROVISION

SEC. 7. [None assigned.] (a) No person shall receive benefit payments as a member of more than one of the tribes under this Act. An individual who is a member of more than one of the tribes under this Act must designate the tribe from which he or she will receive per capita or dividend payments prior to receiving a per capita or dividend payment under this Act.

(b) The per capita shares or dividend payments of living, competent adults shall be paid directly to them. The shares or payments of deceased individuals, legal incompetents and minors, shall be determined and distributed under regulations prescribed by the Secretary pursuant to the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2512; 25 U.S.C. 1401 et seq.).

SEC. 8. [None assigned.] Per capita and dividend payment distributions made pursuant to this Act shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2515; 25 U.S.C. 1407).

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 99-130.]

P.L. 99-146, Approved November 11, 1985 (99 Stat. 780)
[Chippewas of Lake Superior]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [None assigned.] Notwithstanding any other provision of law, the funds appropriated for the following Indian Claims Commission judgments awards (less attorney fees and litigation expense and plus all investment income and interest accrued) shall be used and distributed under this Act:

(1) Docket 18-S for the Chippewas of Lake Superior;

(2) Docket 18-U for the Chippewas of Lake Superior; and

(3) Dockets 18-C and 18-T funds apportioned to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

SEC. 2. [None assigned.] (a) DIVISION OF DOCKET 18-S.—The Secretary of the Interior shall divide the amount for Docket 18-S with two-thirds of the funds for the Chippewas of Lake Superior and one-third for the Chippewas of the Mississippi.

(b) The respective shares of the Chippewas of Lake Superior in Docket 18-S shall be divided as follows:

(1) Bad River Reservation, Wisconsin, * * *;

(2) Lac du Flambeau Reservation, Wisconsin, * * *;

(3) Lac Courte Oreilles Reservation, Wisconsin, * * *;

(4) Sokaogon Chippewa Community (Mole Lake Band), Wisconsin, * * *;

(5) Red Cliff Reservation, Wisconsin, * * *;

(6) St. Croix Reservation, Wisconsin, * * *;

(7) Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands), Michigan, * * *;

(8) Fond du Lac Reservation, Minnesota, * * *;

(9) Grand Portage Reservation, Minnesota, * * *;

(10) Nett Lake Reservation (including Vermillion Lake and Deer Creek), Minnesota, * * *; and

(11) White Earth Reservation, Minnesota, * * *.

* * * * * * *

SEC. 6. [None assigned.] MISCELLANEOUS.—[1] The per capita shares under this Act of competent adults shall be paid directly to them. The per capita shares under this Act of deceased individual beneficiaries, legal incompetents, and minors shall be determined and distributed under regulations prescribed by the Secretary which are generally applicable to funds distributed under the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1401 et seq.).

(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

(c) Amounts remaining after per capita payments under this Act shall revert to the governing body of the respective tribal group for program purposes approved by the Secretary.

(d) No person shall be entitled to receive under this Act more than one per capita share from the same docket award.

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 99-146.]

P.L. 99-177, Approved December 12, 1985 (99 Stat. 1037)
[Public Debt Limit Increase]

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Title II—Balanced Budget and Emergency Deficit Control Act of 1985

* * * * * * *

SEC. 251. [2 U.S.C. 901] REPORTING OF EXCESS DEFICITS.[1]

(a) INITIAL ESTIMATES, DETERMINATIONS, AND REPORTS BY OMB AND CBO.—

* * * * * * *

[1] As in original; "(a)" should be inserted.
[1] P.L. 100-119, §102(a), amended this section in its entirety.

(2) REPORTS.— * * *

(B) The Director of OMB shall issue a report to the President and the Congress on August 25 of the calendar year in which the fiscal year begins (or on October 20, 1987, in the case of the fiscal year 1988) containing the same information required in subparagraph (A) and the information required in clauses (i) and (ii) for such fiscal year as follows:

* * * * * * *

(iv) The report issued under this subparagraph for any fiscal year (except fiscal year 1988) may not assume aggregate outlays for the health insurance programs under title XVIII of the Social Security Act (before taking into account legislation enacted or regulations prescribed after the current services budget is submitted) which deviate by more than 1 percent from the amount of outlays estimated for such programs in the current services budget submitted by the President pursuant to section 1109(a) of title 31, United States Code, for such fiscal year. For fiscal year 1988 the report issued under this subparagraph shall assume aggregate outlays for such programs (before taking into account legislation enacted or regulations promulgated as final after August 20, 1987) equal to the amount assumed for such programs by the Director of OMB in the report submitted to the Temporary Joint Committee on Deficit Reduction on August 20, 1987, except that, unless necessary to comply with requirements provided in law, any change in administrative procedures that increases or decreases the average number of days for the payment of claims under title XVIII of the Social Security Act, compared to such average in the preceding fiscal year, shall not be taken into account for purposes of this Act.

* * * * * * *

(6) BUDGET BASELINE.—In estimating the deficit excess and net deficit reduction in the budget baseline and in computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget baseline shall be determined by—

* * * * * * *

(E) assuming that medicare spending levels for inpatient hospital services will be based upon the regulations most recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act;

* * * * * * *

(b) DATES FOR SUBMISSION AND PRINTING OF REPORTS.—Each report submitted under this section shall be submitted to the Federal Register on the day that it is issued and printed on the following day. If the date specified for the submission of a report by the Directors or its printing in the Federal Register under this section falls on a Sunday or legal holiday, such report shall be submitted or printed on the following day.

* * * * * * *

SEC. 252. [2 U.S.C. 902] PRESIDENTIAL ORDER.[2]

(a) ISSUANCE OF INITIAL ORDER.—

(1) IN GENERAL.—On August 25 (or October 20, 1987, in the case of fiscal year 1988), following the submission of a report by the Director of OMB under section 251(a)(2)(B), the President, in strict accordance with the requirements of paragraph (2) and section 251(a)(3) and (4) and subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in sections 255, 256, and 257, shall make all the reductions specified in such report by issuing an order that (notwithstanding the Impoundment Control Act of 1974)—

(A) in accordance with such report, suspends the operation of each provision of Federal law that would (but for such order) require an automatic spending increase to take effect during such fiscal year in such a manner as to prevent such increase from taking effect, or reduce such increase, in accordance with such report; and

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[2] P.L. 100-119, §102(a), amended §252 in its entirety.

P.L. 100-202, §1, provides that the orders issued by the President on October 20, 1987, and November 20, 1987, pursuant to §252 are hereby rescinded, effective December 22, 1987. Any action taken to implement the orders shall be reversed, and any sequesterable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

(B) in accordance with such report, sequesters new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974; and obligation limitations—

(i) for funds provided in annual appropriation Acts, from each affected program, project, and activity (as set forth in the most recently enacted applicable appropriation Acts and accompanying committee reports for the program, project, or activity involved, including joint resolutions providing continuing appropriations and committee reports accompanying Acts referred to in such resolutions), applying the same reduction percentage as the percentage by which the account involved is reduced in the report submitted under section 251(a)(2)(B) or from each affected budget account if the program, project, or activity is not so set forth, and

(ii) for funds not provided in annual appropriation Acts, from each budget account activity as identified in the program and financing schedules contained in the appendix to the Budget of the United States Government for that fiscal year, applying the same reduction percentage as the percentage by which the account is reduced in such report.

* * * * * * *

(4) EFFECT OF SEQUESTRATION UNDER INITIAL ORDER.—

(A) IN GENERAL.—Notwithstanding section 257(7), amounts sequestered under an order issued by the President under paragraph (1) shall be withheld from obligation or expenditure pending the issuance of a final order under subsection (b) and shall be permanently sequestered or reduced in accordance with such final order upon the issuance of such order.

(B) SPECIAL RULE CONCERNING REDUCTION OF PAYMENTS UNDER THE MEDICARE PROGRAM.—

(i) IN GENERAL.—With respect to services furnished during the interim period (as defined in clause (iii)) for any fiscal year, and notwithstanding any other provision of this Act, payments under the health insurance programs under title XVIII of the Social Security Act shall not be reduced by an initial order under this subsection for that fiscal year.

(ii) DIRECTOR OF OMB TO DETERMINE ANNUALIZED PERCENTAGE REDUCTION.—The Director of OMB, in consultation with the Secretary of Health and Human Services, shall determine a percentage reduction which shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished in any fiscal year after the interim period for that year, such that the reduction made in such payments under the final order under subsection (b) for that year shall achieve a total reduction of 2 percent (or, if lower, the uniform percentage reduction provided under section 251(a)(3)(E)(i)) in such payments for such fiscal year as determined on a 12-month basis.

(iii) INTERIM PERIOD.—In this subparagraph, the term "interim period" means, with respect to a fiscal year, the period beginning on October 1 of the fiscal year and ending on the date of the issuance of the final order under subsection (b) with respect to that fiscal year.

* * * * * * *

(7) TREATMENT OF AUTOMATIC SPENDING INCREASES.—

(A) FISCAL YEARS 1987-1993.—Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with the first day of such fiscal year and ending with the date on which a final order is issued pursuant to subsection (b) shall be suspended until such final order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such final order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such final order provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(B) PROHIBITION AGAINST RECOUPMENT.—Notwithstanding subparagraph (A), if an amount required to be withheld is paid, no recoupment shall be made against an individual to whom payment was made.

(C) EFFECT OF LUMP-SUM PAYMENTS ON NEEDS-RELATED PROGRAMS.—Lump-sum payments made under the last sentence of subparagraph (A) shall not be considered as income or resources or otherwise taken into account in determining the eligibility of any individual for aid, assistance, or benefits under any Federal or federally assisted program which conditions such eligibility to any extent upon the income or resources of such individual or his or her family or household, or in determining the amount or duration of such aid, assistance, or benefits.

(b) ISSUANCE OF FINAL ORDER.—

(1) IN GENERAL.—On October 15 of the fiscal year (or on November 20, 1987, in the case of fiscal year 1988), after the submission of the revised report by the Director of OMB under section 251(c)(2), the President shall issue a final order under this section to make all of the reductions and sequestrations specified in such report, but only to the extent and in the manner provided in such report. The order issued under this subsection—

(A) shall include the same reductions and sequestrations as the initial order issued under subsection (a), adjusted to the extent necessary to take account of any changes in relevant amounts or percentages determined by the Director of OMB in the revised report submitted under section 251(c)(2), and shall include a reduction in payments under the health care programs under title XVIII of the Social Security Act determined in accordance with subsection (a)(4)(B)(ii),

* * * * * * *

(e) RELATIVE BUDGET PRIORITIES NOT TO BE ALTERED.—Nothing in the preceding provisions of this section shall be construed to give the President new authority to alter the relative priorities in the Federal budget that are established by law, and no person who is or becomes eligible for benefits under any provision of law shall be denied eligibility by reason of any order issued under this part.

* * * * * * *

SEC. 255. [2 U.S.C. 905] EXEMPT PROGRAMS AND ACTIVITIES.

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

* * * * * * *

(h) LOW-INCOME PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children * * *;
Child nutrition * * *;
Commodity supplemental food program * * *;[3]
Food stamp programs * * *;
Grants to States for Medicaid * * *;
Supplemental Security Income Program * * *; and
Women, infants, and children program * * *.

* * * * * * *

SEC. 256. [2 U.S.C. 906] EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

* * * * * * *

(d) SPECIAL RULES FOR MEDICARE PROGRAM.—

(1) MAXIMUM PERCENTAGE REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—The maximum permissible reduction for the health insurance programs under title XVIII of the Social Security Act for any fiscal year, pursuant to an order issued under section 252, consists only of a reduction of—

(A) 1 percent in the case of fiscal year 1986, and

(B) 2 percent (or such higher percentage as may apply as determined in accordance with section 252(a)(4)(B)(ii))[4] in the case of any subsequent fiscal year,

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[3] P.L. 100-119, §104(a)(1), inserted "Commodity supplemental food program . . .;".
[4] P.L. 100-119, §102(b)(11), inserted "(or such higher percentage as may apply as determined in accordance with section 252(a)(4)(B)(ii))".

in each separate payment amount otherwise made for a covered service under those programs without regard to this part.

(2) TIMING OF APPLICATION OF REDUCTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

(C) EFFECTIVE PERIOD OF ORDER FOR FISCAL YEAR 1986.—For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.

(3) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(4) NO EFFECT ON COMPUTATION OF AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(e) TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM.—Notwithstanding any change in the display of budget accounts, any[5] order issued by the President under section 252 shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(f) TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any order issued by the President under section 252 shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

* * * * * * *

(h) TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS.—(1) For purposes of section 252—

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

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[5]P.L. 100-119, §104(a)(4), struck out "Any" and substituted "Notwithstanding any change in the display of budget accounts, any".

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 252 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

* * * * * * *

SEC. 257. [2 U.S.C. 907] DEFINITIONS.

* * * * * * *

(11)[6] As used in this part, all references to section 401(c)(2) of the Congressional Budget Act of 1974 shall include (but are not limited to) payments to any person or government under terms of law for the following programs:

* * * * * * *

(H) Social services block grant (75-1634-0-1-506).
(I) Family social services (75-1645-0-1-506).
(J) Rehabilitation services and handicapped research (91-0301-0-1-506).
(K) Grants to States for medicaid (75-0512-0-1-551).
(L) Special benefits for disabled coal miners (75-0409-0-1-601).
(M) Black lung disability trust fund (20-8144-0-7-601).
(N) Special benefits (16-1521-0-1-602).
(O) Federal unemployment benefits and allowances (16-0326-0-1-603).
(P) Supplemental security income program (75-0406-0-1-609).
(Q) Family support payments to States (75-1501-0-1-609).
(R) Food stamp program (12-3505-0-1-605).
(S) Child nutrition programs (12-3539-0-1-605).

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[*Internal References.*—Social Security Act §710(a) and (c) cites the Balanced Budget and Emergency Deficit Control Act of 1985. Social Security Act §§202(w), 215(i), 1842(a), 1870(f), and 1876(a), the catchlines to title IV, Part D (at §451), title IV, Part E (at §470), and title XVIII and §§455, 458, and 474 have footnotes referring to P.L. 99-177.]

P.L. 99-190, Approved December 19, 1985 (99 Stat. 1185)
[Continuing Appropriations for Fiscal Year 1986]

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SEC. 126. [None assigned.] Notwithstanding any other provision of this joint resolution, the Secretary of Health and Human Services shall extend, for one additional year, approval to the municipal health services demonstration projects located in Baltimore, Cincinnati, Milwaukee, and San Jose authorized under section 402(a) of the Social Security Amendments of 1967[1].

SEC. 127. [None assigned.] From the amounts awarded to a State from its allotment under section 2003 of the Social Security Act for fiscal year 1986, the State shall use to maintain and improve the availability and quality of training provided under section 401(b)(1), 98 Stat. 2196, such sums as the State may determine to be required.

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[6] P.L. 100-119, §102(b)(6), added paragraph (11).
[1] P.L. 90-248 (Vol. II, p. 561).

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SEC. 130. [None assigned.] (a) In the administration of subchapter III of chapter 83 of title 5, United States Code[2], title II of the Social Security Act, chapter 21 of the Internal Revenue Code of 1954[3], and title II of Public Law 98-168[4], the individual holding the position of Chief of the United States Capitol Police on January 1, 1985—

(1) shall be held and considered to have been appointed to that position before January 1, 1984,

(2) during the 60-day period following the date of the enactment into law of this section, shall be eligible to elect coverage under the provisions of such subchapter III, and

(3) upon such election, shall not be covered by section 210(a)(5)(G) of the Social Security Act, and section 3121(b)(5)(G) of the Internal Revenue Code of 1954[5], with respect to periods of service performed by such individual in such position after the election.

(b) Any period of service performed by such individual as Chief of the United States Capitol Police prior to making any such election shall, after such election and payment by or on behalf of such individual of appropriate contributions and interest covering such period of service, be considered as creditable service for purposes of such subchapter III and shall not be considered as covered service for purposes of title II of Public Law 98-168.

(c) Service performed by such individual as Chief of the United States Capitol Police after December 31, 1983, and prior to the election referred to in subsection (a), shall also be considered "employment" for purposes of the provisions of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, if such service would have been "employment" under such provisions but for this section.

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[*Internal References.*—Social Security Act §210(a) and the catchlines to title II, §§1110 and 2003 have footnotes referring to P.L. 99-190.]

P.L. 99-264, Approved March 24, 1986 (100 Stat. 61)
White Earth Reservation Land Settlement Act of 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 331 note] That this Act may be cited as the "White Earth Reservation Land Settlement Act of 1985".

SEC. 2. [25 U.S.C. 331 note] The Congress finds that—

(1) claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reservation in Minnesota are the subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and are creating great hardship and uncertainty for government, Indian communities, and non-Indian communities;

(2) the lawsuits and uncertainty will result in great expense and expenditure of time, and could have a profound negative impact on the social and well-being of everyone on the reservation;

(3) the White Earth Band of Chippewa Indians, State of Minnesota, along with its political subdivisions, and other interested parties have made diligent efforts to fashion a settlement to these claims, and the Federal Government, by providing the assistance specified in this Act, will make possible the implementation of a permanent settlement with regard to these claims;

(4) past United States laws and policies have contributed to the uncertainty surrounding the claims;

(5) it is in the long-term interest of the United States, State of Minnesota, White Earth Band, Indians, and non-Indians for the United States to assist in the implementation of a fair and equitable settlement of these claims; and

(6) this Act will settle unresolved legal uncertainties relating to these claims.

SEC. 3. [25 U.S.C. 331 note] For purposes of this Act:

(a) "Allotment" shall mean an allocation of land on the White Earth Reservation, Minnesota, granted, pursuant to the Act of January 14, 1889 (25 Stat. 642), and the Act of February 8, 1887 (24 Stat. 388), to a Chippewa Indian.

(b) "Allottee" shall mean the recipient of an allotment.

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[2]Vol. II, p. 63.
[3]Vol. I, p. 1101.
[4]Vol. II, p. 769.
[5]Vol. I, p. 1111.

(c) "Full blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the roll approved by the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a Federal court of competent jurisdiction; it shall also refer to an individual who is not designated on said roll but who is the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was an Indian enrolled in any other federally recognized Indian tribe, band, or community.

(d) "Inherited" shall mean received as a result of testate or intestate succession or any combination of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

(e) "Mixed blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a Federal court of competent jurisdiction; it shall also refer to any descendants of an individual who was listed on said roll providing the descendant was not a full blood under the definition in subsection (c) of this section. The term "mixed blood" shall not include an Indian enrolled in any federally recognized Indian tribe, band, or community other than the White Earth Band.

(f) "Tax forfeited" shall mean an allotment which, pursuant to State law, was declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

(g) "Majority" shall mean the age of twenty-one years or older.

(h) "Secretary" shall mean the Secretary of the Interior or his/or her authorized representative.

(i) "Trust period" shall mean the period during which the United States held an allotment in trust for the allottee or the allottee's heirs. For the purpose of this Act, the Executive Order Numbered 4642 of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents for which there were no applications, and if such allotments were not specifically exempted from the Executive orders; and the Indian Reorganization Act of June 18, 1934, shall be deemed to have extended indefinitely trust periods on all allotments or interests therein the trust periods for which would otherwise have expired on June 18, 1934, or at any time thereafter. Said Executive orders and Act shall be deemed not to have extended the trust period for allotments or interests which were sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the Secretary, or for allotments or interests which were sold or mortgaged by anyone where such sale or mortgage was the subject of litigation in Federal court which proceeded to a judgment on the merits and where the outcome of such litigation did not vacate or void said sale or mortgage.

(j) "Interest", except where such item is used in conjunction with "compound", shall mean a fractional holding, less than the whole, held in an allotment.

(k) "Adult" shall mean having attained the age of majority.

(l) "Heir" means a person who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or Minnesota law, or one who is determined under section 9, by the application of the inheritance laws of Minnesota in effect on March 26, 1986, to be entitled to receive compensation payable under section 8.[1]

(m) "Transfer" includes but is not limited to any voluntary or involuntary sale, mortgage, tax forfeiture or conveyance pursuant to State law; any transaction the purpose of which was to effect a sale, mortgage, tax forfeiture or conveyance pursuant to State law; any Act, event, or circumstance that resulted in a change of title to, possession of, dominion over, or control of an allotment or interest therein.

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SEC. 9. [25 U.S.C. 331 note] The Secretary shall determine the heirs, if heretofore undetermined, or modify the inventory of an existing heirship determination of any full or mixed blood or Indian enrolled in any other federally recognized Indian tribe, band, or community, where appropriate for the purposes of this Act: *Provided*, That the Secretary shall accept any determination of heirship by the courts of the State of Minnesota as provided in section 5(a) of this Act.

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[1]P.L. 100-153, §6(a), amended paragraph (l) of section 3 of the White Earth Reservation Land Settlement Act of 1985 in its entirety. Executed as if the amendment read "subsection (l) of section 3".

SEC. 12. [25 U.S.C. 331 note] (a) There is established in the Treasury of the United States a fund to be known as the White Earth Economic Development and Tribal Government Fund. Money in this Fund shall be held in trust by the United States for the White Earth Band of Chippewa Indians, and shall be invested and managed by the Secretary in the same manner as tribal trust funds pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(b) The White Earth Economic Development and Tribal Government Fund shall consist of—

(1) money received by the White Earth Band as compensation pursuant to section 8; and

(2) money received by the White Earth Band as a result of amounts forfeited pursuant to section 8(f); and

(3) money received as an appropriation pursuant to section 15; and

(4) income accruing on such sums.

Income accruing to the White Earth Economic Development and Tribal Government Fund shall, without further appropriation, be available for expenditure as provided in subsection (c).

(c) Income from the fund may be used by the authorized governing body of the band for band administration. Principal and income may be used by the authorized governing body of the band for economic development, land acquisition, and investments: *Provided, however,* That under no circumstances shall any portion of the moneys described in subsection (b) be used for per capita payments to any members of the band: *Provided further,* That none of the funds described in subsection (b) shall be expended by the governing body of the band until—

(1) such body has adopted a band financial ordinance and investment plan for the use of such funds; and

(2) such body has submitted to the Secretary a waiver of liability on the part of the United States for any loss resulting from the use of such funds; and

(3) the Secretary has approved the band financial ordinance and investment plan. The Secretary shall approve or reject in writing such ordinance and plan within sixty days of the date it is mailed or otherwise submitted to him: *Provided,* That such ordinance and plan shall be deemed approved if, sixty days after submission, the Secretary has not so approved or rejected it. The Secretary shall approve the ordinance and plan if it adequately contains the element specified in this subsection.

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SEC. 16. [25 U.S.C. 331 note] None of the moneys which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

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[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-264.]

P.L. 99-272, Approved April 7, 1986 (100 Stat. 82)
Consolidated Omnibus Budget Reconciliation Act of 1985

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SEC. 9108. CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS.

(a) [42 U.S.C. 1395ww note] CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972, or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972), shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act if such system applies—

(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

(2) to the review of at least 75 percent of—

(A) all revenues or expenses in such geographic area for inpatient hospital services, and

(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX.

(b) [42 U.S.C. 1395ww note] APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

(c) [42 U.S.C. 1395ww note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

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SEC. 9114. INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS.

(a) [42 U.S.C. 1395ww note] DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

(b) [42 U.S.C. 1395ww note] CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.

SEC. 9115. SPECIAL RULES FOR IMPLEMENTATION OF SUBPART.

(a) [42 U.S.C. 1395ww note] WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart.

(b) [42 U.S.C. 1395ww note] USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.

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SEC. 9122. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN CHAMPUS AND CHAMPVA PROGRAMS.

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(c) [None assigned.] REFERENCE TO STUDY REQUIRED.—For a study of the use by CHAMPUS of the medicare prospective payment system, see section 634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525), the deadline for which is extended under section 2002 of this Act.

(d) [42 U.S.C. 1395cc note] REPORT.—The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

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SEC. 9126.

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(c) [42 U.S.C. 1395y note] REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the[1] period beginning with the first month beginning after the date of the enactment of this Act and ending on October 31, 1990[2].

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SEC. 9128. SENSE OF THE SENATE WITH RESPECT TO INPATIENT HOSPITAL DEDUCTIBLE.

[None assigned.] In view of the $92 Medicare hospital deductible increase that went into effect January 1, 1986, it is the sense of the Senate that the Committee on Finance should report legislation which will reform calculation of the annual increase in such deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

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[1] P.L. 100-360, §426(b)(1), struck out "30-month", effective July 1, 1988.
[2] P.L. 100-360, §426(b)(2), inserted "and ending on October 31, 1990", effective July 1, 1988.

SEC. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

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(c) * * *

(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

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(g) [42 U.S.C. 1395ww note] ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—The Secretary of Health and Human Services shall establish a system, for implementation not later than October 1, 1988[3], which provides for a unique identifier for each physician who furnishes services for which payment may be made under title XVIII of the Social Security Act.

(h) [42 U.S.C. 1395ww note] PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

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(j) [42 U.S.C. 1395ww note] SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act or section 402 of the Social Security Amendments of 1967, for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

SEC. 9204. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

(a) [42 U.S.C. 1395ww note] MORATORIUM.—Prior to January 1, 1990[4], the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

(b) [42 U.S.C. 1395ww note] COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

SEC. 9205. HOME HEALTH WAIVER OF LIABILITY.

[42 U.S.C. 1395y note] The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until November 1, 1990[5].

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[3]P.L. 100-203, §4085(f), struck out "July 1, 1987" and substituted "October 1, 1988".

[4]P.L. 100-203, §4085(c), struck out "1988" and substituted "1989".
P.L. 100-647, §8426, struck out "1989" and substituted "1990".

[5]P.L. 100-360, §426(d), struck out "12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act" and substituted "November 1, 1990".

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SEC. 9215. EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

[42 U.S.C. 1395b-1 note] The Secretary of Health and Human Services shall extend, for a period of three additional years, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967.

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SEC. 9217. LIVER TRANSPLANTS.

(a) [None assigned.] The Senate finds that:

(1) There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

(2) There are 4,000 to 4,700 potential candidates in the United States each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

(3) There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

(4) After extensive review and consideration of all the available data, an National Institutes of Health expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

(5) National Institutes of Health further recommended that liver transplants be done in individuals under 18 years of age.

(6) The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

(7) The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) [None assigned.] Based upon the above findings, it is the sense of the Senate that:

(1) For the purposes of title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

(2) A liver transplant shall be covered under such title when reasonable and medically necessary.

(3) The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

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SEC. 9220. EXTENSION OF ON LOK WAIVER.

(a) [None assigned.] CONTINUED APPROVAL.—

(1) MEDICARE WAIVERS.—Notwithstanding any limitations contained in section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services shall continue approval of the risk-sharing application (described in section 603(c)(1) of Public Law 98-21) for waivers of certain requirements of title XVIII of the Social Security Act after the end of the period described in that section.

(2) MEDICAID WAIVERS.—Notwithstanding any limitations contained in section 1115 of the Social Security Act, the Secretary shall approve any application of the Department of Health Services, State of California, for a waiver of requirements of title XIX of such Act in order to continue carrying out the demonstration project referred to in section 603(c)(2) of Public Law 98-21 after the end of the period described in that section.

(b) [None assigned.] TERMS, CONDITIONS, AND PERIOD OF APPROVAL.—The Secretary's approval of an application (or renewal of an application) under this section—

(1) shall be on the same terms and conditions as applied with respect to the corresponding application under section 603(c) of Public Law 98-21 as of July 1, 1985, except that requirements relating to collection and evaluation of informa-

tion for demonstration purposes (and not for operational purposes) shall not apply; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with the terms and conditions described in paragraph (1).

SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) [None assigned.] APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through July 31, 1987, of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project as in effect on August 31, 1985.

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SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

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(b) * * *

(3) [42 U.S.C. 1395u note] PERIOD FOR ENTERING PARTICIPATION AGREEMENTS.—The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act, as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.

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SEC. 9304. DETERMINATIONS OF INHERENT REASONABLENESS OF CHARGES AND CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.

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(b) [42 U.S.C. 1395u note] COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.—(1) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

(2) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

(3) In this subsection, the term "hospital-compensated physician" means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.

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SEC. 9314. DEMONSTRATION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE.

(a) [42 U.S.C. 1395b-1 note] DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act (hereinafter in this section referred to as "medicare beneficiaries").

(b) [42 U.S.C. 1395b-1 note] PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

(1) health screenings,
(2) health risk appraisals,
(3) immunizations, and
(4) counseling on and instruction in—
(A) diet and nutrition,
(B) reduction of stress,
(C) exercise and exercise programs,
(D) sleep regulation,
(E) injury prevention,
(F) prevention of alcohol and drug abuse,
(G) prevention of mental health disorders,
(H) self-care, including use of medication, and
(I) reduction or cessation of smoking.

(c) [42 U.S.C. 1395b-1 note] CONDUCT OF PROGRAM.—The demonstration program shall—

(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

(2) be conducted in no fewer than five sites (at least one of which shall serve a rural area), which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

(4) be designed—

(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

(C) to facilitate evaluation under subsection (d).

(d) [42 U.S.C. 1395b-1 note] EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act.

(e) [42 U.S.C. 1395b-1 note] REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

(2) Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report—

(A) the evaluation described in subsection (d), and

(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

(f) [42 U.S.C. 1395b-1 note] FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments

under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the administrative costs of the demonstration program shall not exceed $5,900,000 over the duration of the program.

(g) [42 U.S.C. 1395b-1 note] WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

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SEC. 9401. 100 PERCENT PEER REVIEW OF CERTAIN SURGICAL PROCEDURES.

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(e) [42 U.S.C. 1320c-13 note] STUDY.—The Secretary of Health and Human Services shall conduct a study of the results of the amendments made by this section, and shall report the results of the study to the Congress within 36 months after the date of the enactment of this Act.

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SEC. 9502. MODIFICATIONS OF WAIVER PROVISIONS FOR HOME AND COMMUNITY-BASED SERVICES.

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(f) [42 U.S.C. 1396n note] WAIVER EXTENSIONS.—The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.

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SEC. 9515. LIFE SAFETY CODE RECOGNITION.

[42 U.S.C. 1396d note] For purposes of section 1905(c) of the Social Security Act, an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.

SEC. 9516. CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

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(c) [42 U.S.C. 1396r note] REPORT.—The Secretary of Health and Human Services shall submit a report to the Congress on the implementation and results of section 1922[•] of the Social Security Act. Such report shall be submitted not later than 30 months after the effective date of final regulations promulgated to implement such section.

SEC. 9517. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

* * * * * * *

(c) * * *

(2) [42 U.S.C. 1396b note] (A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

(B) In the case of a health insuring organization—

(i) which first becomes operational on or after January 1, 1986, but

(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act and before such date, certain requirements of section 1902 of such Act,

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act shall not apply during the period for which such waiver is effective.

[•]P.L. 100-203, §4211(l), struck out "1919" and substituted "1922".

(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.

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SEC. 9522. EXPANSION OF SERVICES UNDER DEMONSTRATION WAIVERS.

[None assigned.] In the case of waivers granted to (or submitted during 1986 by) the State of Oregon under section 1915(b) of the Social Security Act, the Secretary of Health and Human Services may waive the requirements of section 1903(m)(2)(A) of such Act with respect to any entity providing services under any such waiver if such entity does not provide more than 5 of the services listed in section 1903(m)(2)(A) of such Act, and does not provide inpatient hospital services.

SEC. 9523. EXTENSION OF TEXAS WAIVER PROJECT.

(a) [None assigned.] RENEWED APPROVAL.—Notwithstanding any limitations contained in section 1115 of the Social Security Act but subject to subsection (b) of this section, the Secretary of Health and Human Services, upon application, shall renew approval of demonstration project number 11-P-97473/6-06 ("Modifications under the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged"), previously approved under that section, until January 1, 1990[1].

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's renewed approval of the project under subsection (a)—

(1) shall be on the same terms and conditions as applied to the project as of December 31, 1985; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with such terms and conditions.

SEC. 9524. WISCONSIN HEALTH MAINTENANCE ORGANIZATION WAIVER.

[None assigned.] The waiver granted to the State of Wisconsin pursuant to section 1915(b) of the Social Security Act relating to the requirements of section 1903(m) of such Act in conjunction with a waiver of the requirements of section 1902(a)(23) of such Act shall, upon request by the State, be reinstated, and shall be renewable for terms of 2 years, subject to the showings required generally under section 1915(b) of such Act.

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SEC. 9528. ANNUAL CALCULATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

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(b) [42 U.S.C. 1301 note] EFFECTIVE DATE.—The amendments made by this section shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act.

(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State with respect to either such section if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.

SEC. 9529. MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AND FOSTER CARE.

* * * * * * *

(b) * * *

(2) [42 U.S.C. 1396a note] In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act) entered into before the date of the enactment of this Act—

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[1] P.L. 100-203, §4115(d) [as added by P.L. 100-360, §411(k)(9)(C) and amended by P.L. 100-485, §608(d)(26)(G)], struck out "1989" and substituted "1990".

(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.

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SEC. 12114. COVERAGE OF CONNECTICUT STATE POLICE.

[42 U.S.C. 418 note] Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

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SEC. 12202. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.

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(b) [42 U.S.C. 1383c note] IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.

(2) Each State shall—

(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

(B) solicit their applications for such assistance, and

(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.

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SEC. 12301. AFDC QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

(a) [42 U.S.C. 603 note] STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act and for the Medicaid Program under title XIX of such Act. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

(b) [42 U.S.C. 603 note] MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act (hereafter in this section referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States

pursuant to section 403(i) of the Social Security Act (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV-A of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV-A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

(c) [42 U.S.C. 603 note] RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

(A) restructure the quality control systems under title[a] XIX of the Social Security Act to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX[a], and shall reduce payments to States—

(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

(d) [42 U.S.C. 603 note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

* * * * * * *

[*Internal References.*—Social Security Act §1886(d) cites the Medicare and Medicaid Budget Reconciliation Amendments of 1985 (Title IX of P.L. 99-272). Social Security Act titles IV, Part A (at §401), XVIII and XIX, the catchlines to §§218, 1110, 1115, 1164, 1813, 1833, 1881, 1886, and 1922, and §§1634(b), 1842(b) and (i), 1862(a), 1866(a), 1886(c), 1902(a), 1903(m), and 1915(b) and (c) have footnotes referring to P.L. 99-272.]

P.L. 99-319, Approved May 23, 1986 (100 Stat. 478)
Protection and Advocacy for Mentally Ill Individuals Act of 1986

* * * * * * *

FINDINGS AND PURPOSE

SEC. 101. [42 U.S.C. 10801] (a) The Congress finds that—

(1) mentally ill individuals are vulnerable to abuse and serious injury;

(2) mentally ill individuals are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and

(3) State systems for monitoring compliance with respect to the rights of mentally ill individuals vary widely and are frequently inadequate.

(b) The purposes of this Act are—

(1) to ensure that the rights of mentally ill individuals are protected; and

(2) to assist States to establish and operate a protection and advocacy system for mentally ill individuals which will—

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of mentally ill individuals if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

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[a]P.L. 100-485, §609(b)(1), struck out "title IV-A and" and substituted "title". Executed as if P.L. 100-485, §609(b)(1), reads "by striking 'titles IV-A and' ".

[a]P.L. 100-485, §609(b)(2), inserted "under title XIX".

DEFINITIONS

SEC. 102. [42 U.S.C. 10802] For purposes of this title:

(1) The term "abuse" means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death[1] to a mentally ill individual, and includes acts such as—

(A) the rape or sexual assault of a mentally ill individual;

(B) the striking of a mentally ill individual;

(C) the use of excessive force when placing a mentally ill individual in bodily restraints; and

(D) the use of bodily or chemical restraints on a mentally ill individual which is not in compliance with Federal and State laws and regulations.

(2) The term "eligible system" means the system established in a State to protect and advocate the rights of persons with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act.

(3) The term "mentally ill individual" means an individual—

(A) who has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the State; and

(B)(i)[2] who is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of such inpatient or resident are unknown;[3]

(ii) who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility; or[4]

(iii) who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.[5]

(4) The term "neglect" means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death[6] to a mentally ill individual or which placed a mentally ill individual at risk of injury or death[7], and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a mentally ill individual, the failure to provide adequate nutrition, clothing, or health care to a mentally ill individual, or the failure to provide a safe environment for a mentally ill individual, including the failure to maintain adequate numbers of appropriately trained staff[8].

(5) The term "Secretary" means the Secretary of Health and Human Services.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * * * *

SYSTEMS REQUIREMENTS

SEC. 105. [42 U.S.C. 10805] (a) A system established in a State under section 103 to protect and advocate the rights of mentally ill individuals shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of mentally ill individuals if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a mentally ill individual; and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

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[1] P.L. 100-509, §3(1), inserted "or death".
[2] P.L. 100-509, §3(2)(A), inserted "(i)".
[3] P.L. 100-509, §3(2)(B), struck out the period and substituted ", even if the whereabouts of such inpatient or resident are unknown;".
[4] P.L. 100-509, §3(2)(C), added clause (ii).
[5] P.L. 100-509, §3(2)(C), added clause (iii).
[6] P.L. 100-509, §3(3)(A), inserted "or death".
[7] See footnote 6.
[8] P.L. 100-509, §3(3)(B), inserted ", including the failure to maintain adequate numbers of appropriately trained staff".

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to mentally ill individuals;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 106, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access; and

(B) any individual (including an individual who has died or whose whereabouts are unknown)[9]—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such individual has been subject to abuse or neglect;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act for the furnishing of the information required by subsection (b);

(6) establish an advisory council[10]—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of mentally ill individuals; and

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least one-half the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;[11]

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and[12]

(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.[13]

(b) The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to mentally ill individuals in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

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[9] P.L. 100-509, §6(a), inserted "(including an individual who has died or whose whereabouts are unknown)".

[10] P.L. 100-509, §4(1), struck out "a board" and substituted "an advisory council".

[11] P.L. 100-509, §5, struck out the period and substituted ", including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;".

[12] P.L. 100-509, §7(c), added paragraph (8).

[13] P.L. 100-509, §7(c), added paragraph (9).

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.[14]

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[*Internal References.*—Social Security Act §1919(c) cites the Protection and Advocacy for Mentally Ill Individuals Act of 1986. The catchlines to Social Security Act titles XVIII and XIX have footnotes referring to P.L. 99-319.]

P.L. 99-335, Approved June 6, 1986 (100 Stat. 514)
Federal Employees' Retirement System Act of 1986

* * * * * * *

SEC. 301. [5 U.S.C. 8331 note] ELECTIONS.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

(3)(A) Except as provided in subparagraph (B), any individual—

(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and

(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title,

shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).[1]

(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this subsection.[2]

(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983[3], the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

(B) to become subject to chapter 84 of such title.

An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual—

(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

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[14] P.L. 100-509, §4(2), added subsection (c).
[1] P.L. 100-238, §106, added paragraph (3).
[2] P.L. 100-238, §113(a)(1), added paragraph (4).
[3] P.L. 98-168. See Vol. II, p. 769.

(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

(i) elect to become subject to chapter 84 of such title; or

(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

(i) during the period after December 31, 1986, and before July 1, 1987; or

(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

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SEC. 302. [5 U.S.C. 8331 note] EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as "covered service") shall be creditable under chapter 84 of title 5, United States Code, if—

(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the "Fund"), with interest (computed under section 8334(e) of such title); and

(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

(C) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregate, is equal to less than 5 years;

shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

(D) Any service described in subparagraph (A)—

(i) which is not covered service;

(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was

performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

(iii) which, in the aggregrate, is equal to 5 years or more;

shall be creditable for purposes of—

(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1), 8443(a)(1),[4] or 8451 of such title which relates to a minimum period of service for entitlement to an annuity;

(III) the provisions of paragraphs (4) and (6);

(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter;[5]

(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller; and[6]

(VI) the provision of subsection (g) of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection.[7]

(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a minimum period of service for entitlement to an annuity; and

(ii) the provisions of paragraph (4).

(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual's accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual's accrued benefits under the Federal Employees' Retirement System (as determined under paragraph (5)).

(ii) An annuity computed under this subparagraph shall be deemed to be the individual's annuity computed under section 8415 of title 5, United States Code.

(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual's having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

(4) Accrued[8] benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter. Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply.[9]

(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

(B) with respect to service performed before such effective date—

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[4]P.L. 100-20, §1(a), struck out "8442(b)(1)(B)," and substituted "8442(b)(1), 8443(a)(1),".
[5]P.L. 100-238, §107(1), struck out "and".
[6]P.L. 100-238, §107(2), struck out the period and substituted "; and".
[7]P.L. 100-238, §107(3), added subclause (VI).
[8]P.L. 100-238, §134(c), struck out "Except as provided in paragraph (12)(B), accrued" and substituted "Accrued".
[9]P.L. 100-238, §118, added this sentence.

(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes of determining average pay under chapter 83 or 84 of title 5, United States Code.

(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(f) of such title shall apply with respect to the sum computed under such paragraph.

(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

(12)(A)(i) If the electing individual is a reemployed annuitant under section 8344 of title 5, United States Code, under conditions allowing the annuity to continue during reemployment, payment of the annuitant's annuity shall continue after the effective date of the election, and an amount equal to the annuity allocable to the period of actual employment shall continue to be deducted from the annuitant's pay and deposited as provided in subsection (a) of such section. Deductions from pay under section 8422(a) of such title and contributions under section 8423 of such title shall begin effective on the effective date of the election.

(ii) Notwithstanding any provision of section 301, an election under such section shall not be available to any reemployed annuitant who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

(B) If the annuitant serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, such annuitant's annuity, on termination of reemployment, shall be increased by an annuity computed—

(i) with respect to reemployment service before the effective date of the election, under section 8339(a), (b), (d), (e), (h), (i), and (n) of title 5, United States Code, as may apply based on the reemployment in which such annuitant was engaged before such effective date; and

(ii) with respect to reemployment service on or after the effective date of the election, under section 8415(a) through (f) of such title, as may apply based on the reemployment in which such annuitant was engaged on or after such effective date;

with the "average pay" used in any computation under clause (i) or (ii) being determined (based on rates of pay in effect during the period of reemployment,

whether before, on, or after the effective date of the election) in the same way as provided for in paragraph (6). If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of title 5, United States Code, the increase in annuity payable under this subparagraph is reduced by 10 percent and the survivor annuity payable under section 8341(b) of such title is increased by 55 percent of the increase in annuity payable under this subparagraph, unless, at the time of claiming the increase payable under this subparagraph, the annuitant notifies the Office of Personnel Management in writing that such annuitant does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, after having been reemployed for at least 1 full year (or the equivalent thereof, in the case of part-time employment), any survivor annuity payable under section 8341(b) of such title based on the service of such annuitant is increased as though the reemployment had otherwise terminated. In applying paragraph (7) to an amount under this subparagraph, any portion of such amount attributable to clause (i) shall be adjusted under subparagraph (A) of such paragraph, and any portion of such amount attributable to clause (ii) shall be adjusted under subparagraph (B) of such paragraph.

(C)(i) If the annuitant serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, such annuitant may elect, instead of the benefit provided by subparagraph (B), to have such annuitant's rights redetermined, effective upon separation from employment. If the annuitant so elects, the redetermined annuity will become payable as if such annuitant were retiring for the first time based on the separation from reemployment service, and the provisions of this section concerning computation of annuity (other than any provision of this paragraph) shall apply.

(ii) If the annuitant dies while still reemployed, after having been reemployed for at least 5 full years (or the equivalent thereof, in the case of part-time employment), any person entitled to a survivor annuity under section 8341(b) of title 5, United States Code, based on the service of such annuitant shall be permitted to elect to have such person's rights redetermined in accordance with regulations which the Office shall prescribe. Redetermined benefits elected under this clause shall be in lieu of any increased benefits which would otherwise be payable in accordance with the next to last sentence of subparagraph (B).

(D) If the annuitant serves on a full-time basis for less than 1 year (or the equivalent thereof, in the case of part-time employment), any amounts withheld under section 8422(a) of title 5, United States Code, from such annuitant's pay for the period (or periods) involved shall, upon written application to the Office, be payable to such annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8342(c) of such title).

(E) For purposes of determining the period of an annuitant's reemployment service under this paragraph, a period of reemployment service shall not be taken into account unless—

(i) with respect to service performed before the effective date of the election under section 301, it is service which, if performed for at least 1 full year, would have allowed such annuitant to elect under section 8344(a) of title 5, United States Code, to have deductions withheld from pay; or

(ii) with respect to service performed on or after the effective date of the election under section 301, it is service with respect to which deductions from pay would be required to be withheld under the second sentence of section 8468(a) of title 5, United States Code.[10]

(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

(2)(A) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

[10] P.L. 100-238, §134(b), amended paragraph (12) in its entirety.

(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

(i) the amount contributed with respect to such period, exceeds

(ii) the amount required under such clause (i) with respect to such period;

(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such clause (ii) with respect to such period; and

(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

(i) the amount so contributed with respect to such period, exceeds

(ii) the amount required under such subparagraph with respect to such period.

(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefor filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually.[11]

SEC. 303. [5 U.S.C. 8331 note] PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

(B) 1.3 percent of such individual's total basic pay for such period; and

(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regulations prescribed by the Office of Personnel Management.[12]

(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual's pay had been subject to such section during such period;

(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.

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[*Internal References.*—Social Security Act §210(a) and P.L. 88-643, §307 (Vol. II, p. 538), cite the Federal Employees' Retirement System Act of 1986.]

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[11] P.L. 100-238, §119(a), amended paragraph (2) in its entirety.
[12] P.L. 100-238, §119(b), amended this sentence in its entirety.

P.L. 99-346, Approved June 30, 1986 (100 Stat. 674)
Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act

* * * * * * *

SHORT TITLE; DEFINITIONS

SECTION 1. [None assigned.] (a) This Act may be cited as the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act".

(b) For purposes of this Act—

(1) The term "tribe" means the Saginaw Chippewa Indian Tribe of Michigan.

(2) The term "Tribal Council" means the Saginaw Chippewa Tribal Council.

(3) The term "Secretary" means the Secretary of the Interior.

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INVESTMENT FUND

SEC. 3. [None assigned.]

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(e)(1) From the funds described in section 2 and transferred to the Tribal Council pursuant to section 5(a), the sum of $1,000,000 shall be set aside within 90 days of receipt of such funds by the Tribal Council for the express purposes of establishing a separate Elderly Assistance Investment Fund.

(2) Income generated by the Elderly Assistance Investment Fund shall be distributed on a per capita basis to each enrolled Tribal member who is 50 years of age or older on the date that is 18 months after the date on which the amendments to the constitution of the tribe referred to in section 4(a) are adopted and ratified by the qualified voting members of the tribe.

(3) Tribal members entitled to participate in the distribution of such income shall submit verifiable documentation as to their age to the Tribal Council no later than the date that is 3 months after the date established pursuant to paragraph (2) of this subsection. The Tribal Council shall prepare and certify a list of all Tribal members entitled to participate in the distribution of income from the Elderly Assistance Investment Fund within 30 days following the above date.

(4) Distribution of the income from the Elderly Assistance Investment Fund shall be made pursuant to the following terms and conditions:

(A) No Tribal member certified to participate shall receive more than the aggregate sum of $3,000 from the income generated by the Elderly Assistance Investment Fund.

(B) Payments shall be made to each Tribal member certified to participate on an equal pro-rata basis from the available income generated by the Elderly Assistance Investment Fund.

(C) The initial per capita distribution shall be made no sooner than the date that is 30 days after the date that the Tribal Council certifies the list of eligible Tribal members pursuant to paragraph (3) nor no later than 120 days following such date.

(E)[1] If succeeding per capita distributions are necessary to bring the aggregate payment to each Tribal member certified to participate to the sum of $3,000, such distribution shall be made on or before the anniversary date of the initial per capita distribution.

(F)[2] If any Tribal member certified to participate should die before receiving the initial or any succeeding per capita distribution, the payment which would have been paid to that individual shall be returned to the Elderly Assistance Investment Fund for distribution in accordance with this subsection.

(5) When all Tribal members certified to participate in the per capita distribution have been paid the aggregate sum of $3,000, the principal sum of $1,000,000 together with any remaining interest of the Elderly Assistance Investment Fund shall revert back and become part of the Investment Fund established pursuant to subsection (a)(1): *Provided,* That, nothing in this subsection shall be construed to prevent the Tribal Council from establishing an Elderly Assistance Investment Fund or Program providing for per capita distributions or other programs for elderly Tribal members

[1] As in original. Probably should be "(D)".
[2] As in original. Probably should be "(E)".

from the income of the Investment Fund and subject to such terms, conditions and eligibility criteria as the Tribal Council may provide.

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TREATMENT OF AMOUNTS PAID OR DISTRIBUTED FROM THE INVESTMENT FUND

SEC. 6. [None assigned.] (a) No amount of any payment or distribution—

(1) from the principal or income of the Investment Fund, or

(2) of any funds transferred to the Tribal Council under section 8(a)

to any payee or distributee who is an enrolled member of the tribe shall be included in the gross income of the payee or distributee for purposes of any Federal, State, or local income tax.

(b) Any payments or distributions described in subsection (a), and the availability of any amount for such payments or distributions, shall not be considered as income or resources or otherwise used as the basis for denying or reducing—

(1) any financial assistance or other benefit under the Social Security Act—

(A) to which any enrolled member of the tribe, or the household of any such member, is otherwise entitled, or

(B) for which such member or household is otherwise eligible, or

(2) any other—

(A) Federal financial assistance,

(B) Federal benefit, or

(C) benefit under any program funded in whole or in part by the Federal Government,

to which such member or household is otherwise entitled or for which such member or household is otherwise eligible.

* * * * * * *

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-346.]

P.L. 99-377, Approved August 8, 1986 (100 Stat. 805)
[Chippewas of the Mississippi]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [None assigned.] Notwithstanding any other provision of law, the funds appropriated for the Indian Claims Commission judgment awards in Docket 18-S for the Chippewas of the Mississippi (less attorney fees and litigation expense and plus all investment income and interest accrued) shall be used and distributed under this Act.

SEC. 2. [None assigned.] The Secretary of the Interior shall divide the amount for Docket 18-S with two-thirds of the funds for the Chippewas of Lake Superior and one-third for the Chippewas of the Mississippi. The respective shares of the Mississippi Band in Docket 18-S shall be divided by reservation affiliation as follows:

(1) Mille Lac Reservation, Minnesota 569/7624;

(2) White Earth Reservation, Minnesota 6431/7624; and

(3) Leech Lake Reservation, Minnesota 624/7624.

SEC. 3. [None assigned.] The apportioned shares of funds under section 2 of this Act of each reservation or community shall be used as follows:

(1) Eighty percent of each reservation's share shall be held and administered by the Secretary for per capita distribution and the sums (including the investment income accrued) shall be distributed in a sum as nearly equal as possible for each individual born on or prior to and living on the date of enactment of this Act who is enrolled on the respective tribal membership roll brought current to such date of enactment under tribal enrollment procedures.

(2) Twenty percent of each reservation's share shall be held in trust in separate accounts for the tribal organization of the reservation and invested by the Secretary under the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a) until needed for use or distribution under the tribe's plan approved by the Secretary.

(3) The per capita distributions under this section from funds apportioned to reservations or communities of the Minnesota Chippewa Tribe shall only be made to those individuals enrolled with the historical band designation for which the award was made. Plans submitted by two or more of the reservation busine committees of the Minnesota Chippewa Tribe may include joint investment an use programs.

SEC. 4. [None assigned.] (a) MISCELLANEOUS.—The per capita shares under this Act of competent adults shall be paid directly to them. The per capita shares under this Act of deceased individual beneficiaries, legal incompetents, and minors shall be determined and distributed under regulations prescribed by the Secretary which are generally applicable to funds distributed under the Act of October 19, 1973 (87 Stat. 466), as amended (25 U.S.C. 1401 et seq.).

(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

(c) Amounts remaining after per capita payments under this Act shall revert to the governing body of the respective tribal group for program purposes approved by the Secretary.

(d) No person shall be entitled to receive under this Act more than one per capita share from the same Docket award.

[*Internal References.*—Social Security Act §§402(a), 1002(a), 1402(a), 1602(a)(State), 1612(b) and 1613(a) have footnotes referring to P.L. 99-377.]

P.L. 99-425, Approved September 30, 1986 (100 Stat. 966)
Human Services Reauthorization Act of 1986

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TITLE VI—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

SEC. 601. [42 U.S.C. 10901 note] SHORT TITLE.

This title may be cited as the "Child Development Associate Scholarship Assistance Act of 1985".

SEC. 602. [42 U.S.C. 10901] GRANTS AUTHORIZED.

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

SEC. 603. [42 U.S.C. 10902] APPLICATIONS.

(a) APPLICATION REQUIRED.—A State desiring to participate in the grant program established by this title shall submit an application to the Secretary in such form as the Secretary may require.

(b) CONTENTS OF APPLICATIONS.—A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this title will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing for the Child Development Associate credential for such individuals; and

(2) not more than 10 percent of the funds received by the State under this title will be used for the costs of administering the program established in such State to award such assistance.

(c) EQUITABLE DISTRIBUTION.—In making grants under this title, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

SEC. 604. [42 U.S.C. 10903] DEFINITIONS.

For purposes of this title—

(1) the term "eligible individual" means a candidate for the Child Development Associate credential whose income does not exceed the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), by more than 50 percent;

(2) the term "Secretary" means the Secretary of Health and Human Services; and

(3) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

SEC. 605. [42 U.S.C. 10904] ADMINISTRATIVE PROVISIONS.

(a) REPORTING.—Each State receiving grants under this title shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) PAYMENTS.—Payments pursuant to grants made under this title may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

SEC. 606. [42 U.S.C. 10905] AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for each of the fiscal years 1987, 1988, 1989, and 1990 for carrying out this title.

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[*Internal Reference.*—The catchline to title XX has a footnote referring to P.L. 99-425.]

P.L. 99-509, Approved October 21, 1986 (100 Stat. 1874)
Omnibus Budget Reconciliation Act of 1986

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SEC. 9302. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

* * * * * * *

(d) * * *

(2) [42 U.S.C. 1395ww note] EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

(3) [42 U.S.C. 1395ww note] BUDGET-NEUTRAL IMPLEMENTATION.—Paragraph (2) and the amendment made by paragraph (1)(A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the classifications required by such paragraph or amendment.

(4) [None assigned.] RURAL SECONDARY SPECIALTY DEMONSTRATION PROJECT.—

(A) ESTABLISHMENT.—The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall enter into an agreement with Lake Region Hospital and Nursing Home at Fergus Falls, Minnesota, for the purpose of conducting a rural secondary specialty center demonstration project (in this paragraph referred to as the "project") under title XVIII of the Social Security Act.

(B) PURPOSE.—The purpose of this project shall be to determine the effect that a modified system of making payments under part A of such title to rural secondary specialty centers would have on—

(i) total expenditures under such part, and

(ii) the access of medicare beneficiaries located in rural areas to quality health care.

(C) PAYMENTS.—During the period of the demonstration project, payments under part A of such title shall be made under the project on the basis of average standardized amounts computed for urban areas in the region in which the project is conducted, as adjusted by a rural wage index.

(D) DURATION.—The project shall be of a maximum duration of three years.

(E) REPORTS.—The Secretary shall submit a final report to the Congress on the project not later than six months after the completion of the project.

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SEC. §305. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

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(d) [None assigned.] REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than January 1, 1990[1].

(e) [None assigned.] STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1989.

(f) [42 U.S.C. 1395y note] EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act, apply (under section 1879(a) of such Act) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and before November 1, 1990[2].

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(h) [42 U.S.C. 1395x note] DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

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[1] P.L. 100-203, §4009(j)(10) [as added by P.L. 100-360, §411(b)(8)(D)], struck out "2 years after the date of the enactment of this Act" and substituted "January 1, 1990".

[2] P.L. 100-360, §426(a), struck out "1988" and substituted "1990".

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall[3] recommendations for the appropriate use of such instrument or instruments.

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(k) [42 U.S.C. 1395x note] PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

(3) CONSULTATION AND MONITORING.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than February 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

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SEC. 9307. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) [None assigned.] [4] WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hospice, Inc.,[5] the reference in section

[3] As in original.
[4] P.L. 100-203, §4009(c)(1), struck out "TEMPORARY".
[5] P.L. 100-203, §4009(c)(2), struck out "for hospice care provided before October 1, 1988,".

1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

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(d) [42 U.S.C. 1395ww note] MISCELLANEOUS ACCOUNTING PROVISION.—Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act, in the case of a hospital that—

(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, and

(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the "target percentage" shall be 75 percent and the "DRG percentage" shall be 25 percent, and during the remaining 5 months of such period the "target percentage" and the "DRG percentage" shall each be 50 percent.[6]

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SEC. 9311. PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

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(d) [42 U.S.C. 1395h note] * * *

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

SEC. 9312. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

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(c) [42 U.S.C. 1395mm note] * * *

(3) * * *

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

(i) before January 1, 1990, section 1876(f) of the Social Security Act shall not apply to the organization;

(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall waive the requirement of such section with respect to the organization if—

(I) before such date, the organization has submitted to the Secretary a schedule for the organization to comply with the requirement

[6] P.L. 100-203, §4008(e), amended subsection (d) in its entirety.

of section 1876(f)(1) of such Act, and the Secretary has found such schedule to be reasonable and has approved such schedule; and

(II) periodically after such date, the Secretary reviews the organization's compliance with such schedule and determines that the organization has complied, or made significant progress towards compliance, with such schedule; and

(iii) after January 1, 1990, if the Secretary has approved a schedule under clause (ii)(I) and has determined, in a periodic review under clause (ii)(II), that the organization has not complied, or made significant progress towards compliance, with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.[7]

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(h) [42 U.S.C. 1395mm note] ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

(i) [42 U.S.C. 1395mm note] USE OF RESERVE FUNDS.—Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 during fiscal year 1986.

SEC. 9313. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

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(d) [42 U.S.C. 1395ll note] STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) develop prototype criteria and standards for defining and measuring quality of care;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than January 1, 1990[8], a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an

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[7] P.L. 100-203, §4018(d), added subparagraph (D).

[8] P.L. 100-203, §4085(i)(21)(A), struck out "2 years after the date of the enactment of this Act" and subetituted "January 1, 1990".

acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

(5) COORDINATION.—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies.

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SEC. 9315. PAYMENTS FOR HOME HEALTH SERVICES.

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(b) [42 U.S.C. 1395x note] CONSIDERATIONS IN ESTABLISHING LIMITS.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.

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SEC. 9319. MEDICARE AS SECONDARY PAYER; COVERAGE REQUIREMENTS FOR CERTAIN OTHER PAYERS.

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(e) [42 U.S.C. 1395y note] STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY.—The Comptroller General shall study and report to Congress, by not later than March 1, 1990, the impact of the amendments made by this section on access of disabled individuals and members of their family to employment and health insurance. The report shall include information relating to—

(1) the number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member;

(2) the amount of savings to the medicare program achieved annually through this provision; and

(3) the effect on employment, and employment-based health coverage, of disabled individuals and family members.

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SEC. 9320. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

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(j) [42 U.S.C. 1395k note] CONSTRUCTION.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

(k) [42 U.S.C. 1395k note] AUTHORIZATION OF CONTINUATION OF PASS-THROUGH.—

(1) Subject to paragraph (2), the amendments made by this section shall not apply during 1989, 1990, and 1991 to a hospital located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act) if the hospital establishes, before April 1, 1989, to the satisfaction of the Secretary of Health and Human Services that—

(A) as of January 1, 1988, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist),

(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 250 (or such higher number as the Secretary determines to be appropriate), and

(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act for professional services furnished by the anesthetist at the hospital.

(2) Paragraph (1) shall not apply in 1990 or 1991 to a hospital unless the hospital establishes, before the beginning of each respective year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 250 (or such higher number as the Secretary determines to be appropriate).

(3) The Secretary shall implement this subsection in such a manner as to maintain budget neutrality consistent with section 1833(l)(3) of the Social Security Act.[9]

SEC. 9321. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

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(c) [42 U.S.C. 1395ww note] TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21[10], 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21[11], 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence[12] is void and of no effect.

(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and[13] section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from the term[14] "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

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SEC. 9331. PAYMENT FOR PHYSICIANS' SERVICES.

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(c) [42 U.S.C. 1395u note] MEDICARE ECONOMIC INDEX.—

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(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such

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[9] P.L. 100-485, §608(c)(2), added subsection (k).
[10] P.L. 100-119, §107(a)(2)(A), struck out "SEPTEMBER 1" and substituted "NOVEMBER 21".
[11] P.L. 100-119, §107(a)(2)(B), struck out "September 1" and substituted "November 21".
[12] P.L. 100-119, §107(a)(2)(C), struck out "before the date of the enactment of this Act".
[13] P.L. 100-203, §4009(j)(6)(F), inserted "section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and".
[14] P.L. 100-119, §107(a)(2)(D), inserted "section 1886(a)(4) of the Social Security Act, from the term".

methodology except after providing notice in the Federal Register and opportunity for public comment.

(6) MEI DEFINED.—In this subsection, the term "MEI" means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act.

(d) [42 U.S.C. 1395u note] DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), after public notice and opportunity for public comment and after consulation[15] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act shall make payments under part B of title XVIII of such Act based on the grouping of procedure codes effected under paragraph (1).

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SEC. 9332. INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) * * *

[(2) Stricken.[16]]
[(3) Stricken.[17]]

(4) EFFECTIVE DATES.—

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(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act[18] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act[19] not later than September 30[20], 1988, to reflect performance of carriers during the enrollment period before April 1, 1988[21].

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SEC. 9334. PAYMENT FOR CATARACT SURGICAL PROCEDURES.

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(b) [42 U.S.C. 1395u note] RATIFICATION OF REGULATIONS.—

(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(j)(1)(D)[22] of the Social Security Act (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.

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SEC. 9335. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

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[15] As in original.
[16] P.L. 100-203, §4041(a)(3)(B)(i), struck out paragraph (2).
[17] P.L. 100-203, §4041(a)(3)(B)(i), struck out paragraph (3).
[18] P.L. 100-203, §4041(a)(3)(B)(ii), struck out "paragraph (2)" and substituted "the last sentence of section 1842(b)(2) of the Social Security Act".
[19] P.L. 100-203, §4041(a)(3)(B)(iii)(I), struck out "paragraph (3)" and substituted "section 1842(c)(1)(B) of the Social Security Act".
[20] P.L. 100-203, §4041(a)(3)(B)(iii)(II) [as amended by P.L. 100-360, §411(f)(1)(C)], struck out "April 1" and substituted "September 30".
[21] P.L. 100-203, §4041(a)(3)(B)(iii)(III), struck out "at the end of 1987" and substituted "before April 1, 1988".
[22] P.L. 100-203, §4045(c)(2)(C), struck out "1842(b)(10)" and substituted "1842(j)(1)(D)".

(d) * * *

(2) [42 U.S.C. 1395rr note] DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than May 1, 1987. The Secretary shall designate[33] network administrative organizations for such areas by not later than July 1, 1987.

(3) [42 U.S.C. 1395rr note] TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

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(k) * * *

(2) [42 U.S.C. 1395rr note] DEADLINE.—The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than October 1, 1987 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)[34].

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SEC. 9338. SERVICES OF A PHYSICIAN ASSISTANT.

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(d) [42 U.S.C. 1395x note] REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under title XVIII of the Social Security Act, so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act (for which payment may be made under the amendments made by this section).

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SEC. 9339. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

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(d) [42 U.S.C. 1395l note] STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.—

(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

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SEC. 9342. [42 U.S.C. 1395b-1 note] ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,
(2) home and community-based services,
(3) mental health services,
(4) outpatient drug therapy,
(5) respite care and other supportive services and counseling for family,
(6) adult day care services, and

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[33] P.L. 100-203, §4009(j)(6)(E), struck out "establish" and substituted "designate".
[34] P.L. 100-203, §4036(c)(1)(A), inserted "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)".

(7) other in-home services.

(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

(1) each be conducted over a period of 3 years;

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge;

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.[25]

(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

SEC. 9343. PAYMENTS FOR AMBULATORY SURGERY.

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(h) EFFECTIVE DATES.—

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(2) [42 U.S.C. 1395l note] The amendments made by subsections (b)(1) and (c)[26] shall apply to services furnished after June 30, 1987.[27]

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(4) [42 U.S.C. 1395cc note] The amendments made by subsection (d)[28] shall apply to contracts entered into or renewed after January 1, 1987.

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SEC. 9344. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) * * *

(2) [42 U.S.C. 1395w-1 note] APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

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SEC. 9353. PRO REVIEW OF QUALITY OF CARE.

(a) * * *

(4) [42 U.S.C. 1320c-3 note] SMALL-AREA ANALYSIS.—The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control

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[25] As in original. No subsection (e).

[26] P.L. 100-203, §4085(i)(21)(D)(ii), struck out "(d)" and substituted "(c)".

[27] P.L. 100-203, §4085(i)(21)(D)(ii), added "The amendments made by subsection (c) shall apply to services furnished after June 30, 1987."

P.L. 100-360, §411(i)(4)(C)(v), amended P.L. 100-203, §4085(i)(21)(D)(ii), by striking out that sentence.

[28] P.L. 100-203, §4085(i)(21)(D)(iii), struck out "(c)" and substituted "(d)".

peer review organizations with contracts under part B of title XI of the Social Security Act, data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act.

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(6) [42 U.S.C. 1320c-3 note] EFFECTIVE DATES.—(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) shall apply to contracts entered into or renewed on or after[29] January 1, 1987.

(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

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SEC. 9412. [None assigned.] WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.

(a) CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.—

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

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[29] P.L. 100-203, §4039(h)(9)(A) [as added by P.L. 100-360, §411(e)(3)], struck out "paragraphs (1) and (2)(D) shall apply to contracts as of" and substituted "paragraph (1) shall apply to contracts entered into or renewed on or after".

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this subsection.

(b) FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.—

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 10 public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985), including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk[30].

(B) In order to receive a waiver under this subsection, an organization must participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983)[31].

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

SEC. 9413. [None assigned.] CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

SEC. 9414. [None assigned.] NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under title XIX of the Social Security Act for providing respite care services for eligible[32] individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for eligible[33] individuals at risk of institutionalization.

(b) CONDITIONS.—The agreement with the Secretary under this section shall—

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act),

(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),[34]

(3)[35] provide that the State shall utilize a post-eligibility cost-sharing formula

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[30] P.L. 100-203, §4118(g)(1)(A), inserted ", including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk".

[31] P.L. 100-203, §4118(g)(1)(B), struck out "be awarded a grant from the Robert Wood Johnson Foundation" and substituted "participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983)".

[32] P.L. 100-203, §4118(o)(2)(A) [as amended by P.L. 100-360, §411(k)(10)(K)], struck out "elderly and disabled" and substituted "eligible".

[33] See footnote 32.

[34] P.L. 100-203, §4118(o)(1)(B), added this paragraph (2).

[35] P.L. 100-203, §4118(o)(1)(A), redesignated paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively.

based on the available income of participants with income in excess of the [36] income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)[37],

(4)[38] provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

(5)[39] meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means an individual—

(A) who is elderly or disabled,

(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

(C) whose liquid resources (as declared by the individual) do not exceed $40,000,

(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

(2) the term "respite care services" shall include—

(A) short-term and intermittent—

(i) companion or sitter services (paid as well as volunteer),

(ii) homemaker and personal care services,

(iii) adult day care, and

(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

(B) peer support and training for family caregivers (using informal support groups and organized counseling).[40]

(d) PAYMENTS.—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as in[41] additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed $1,000,000 for fiscal year 1987, and $2,000,000 for each of the fiscal years 1988, 1989, and 1990. No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990.

(e) DURATION.—The project under this section shall be of a maximum duration of four years, plus an additional time period of up to six months for final evaluation and reporting.

(f) REPORTS.—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) PROVISIONS SUBJECT TO WAIVER.—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(10)(C)(i)(III),[42] section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

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[36] P.L. 100-360, §411(k)(10)(J), amended P.L. 99-509, §9414(b)(3) [as amended by P.L. 100-203, §4118(o)(1)(C)], by striking out "nonfarm".

[37] P.L. 100-203, §4118(o)(1)(C), struck out "if the project imposes any cost sharing requirements on participants who are eligible for benefits under title XIX of the Social Security Act, such requirements shall be imposed only in accordance with the provisions of section 1916 of such Act" and substituted "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

[38] See footnote 35.

[39] See footnote 35.

[40] P.L. 100-203, §4118(o)(2)(B), amended subsection (c) in its entirety.

[41] As in original.

[42] P.L. 100-203, §4118(o)(3), inserted "section 1902(a)(10)(C)(i)(III),".

SEC. 9415. [None assigned.] INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

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SEC. 9432. [42 U.S.C. 1396a note] STATE UTILIZATION REVIEW SYSTEMS.

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(c) STUDY.—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.[43]

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SEC. 9436. [None assigned.] PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) IN GENERAL.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by[44] amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

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SEC. 9442. [42 U.S.C. 679a] MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

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[43]P.L. 100-203, §4118(p)(11) [as added by P.L. 100-360, §411(k)(10)(M)], amended paragraph (5) in its entirety.
[44]As in original.

(D) educational programs on adoption,
(E) licensed adoption agencies,
(F) State laws relating to adoption,
(G) intercountry adoption, and
(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

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[*Internal References.*—Social Security Act §§215(i), 1833(l), and 1886(e) cite the Omnibus Budget Reconciliation Act of 1986. Social Security Act §§1842(b), (c), and (j); 1845(a); 1861(b), (s), and (v); 1862(a); 1876(f) and (g); 1879(a); 1881(f); 1886(a), (b), (d), (e), and (g); 1915(a); and the catchlines to §§479, 1816, 1817, 1842, 1876, 1886 and titles XI, Part B (at §1151), XVIII, Part B (at §1831), and XIX have footnotes referring to P.L. 99-509.]

P.L. 99-514, Approved October 22, 1986 (100 Stat. 2085)
Tax Reform Act of 1986

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SEC. 1883. TECHNICAL CORRECTIONS IN OTHER PROVISIONS RELATED TO SOCIAL SECURITY ACT PROGRAMS.

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(b) * * *

(11) [42 U.S.C. 602 note] (A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Security Act during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act, shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act.

(B) No State shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent with such provisions) in the administration of the plan during the period specified in subparagraph (A).

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SEC. 1895. COBRA TECHNICAL CORRECTIONS RELATING TO SOCIAL SECURITY ACT PROGRAMS.

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(b) * * *

(2) * * *

(B) The amendments made by subparagraph (A) apply to discharges occurring on or after May 1, 1986.[1]

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[1] P.L. 99-509, §9307(c)(1)(B), as amended by P.L. 100-203, §4009(j)(6)(A), amended subparagraph (D) in its entirety and redesignated subparagraph (D) as subparagraph (B), effective as if included in the enactment of P.L. 99-509. Formerly, subparagraph (D) read as follows:

"(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.".

P.L. 100-647, §1018(r)(1), struck out P.L. 99-514, §1895(b)(1) and (2).

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(16) * * *

(C) [42 U.S.C. 1395y note] For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

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[*Internal References.*—Social Security Act §§402(a), 404(a), 1862(a), and 1886(d) and the catchline to §478 have footnotes referring to P.L. 99-514.]

P.L. 99-570, Approved October 27, 1986 (100 Stat. 3207)
Anti-Drug Abuse Act of 1986

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SEC. 11005. [42 U.S.C. 602 note] TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER SSI AND MEDICAID PROGRAMS.

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(d) AFDC.—No later than six months after the date of enactment of this Act and after consultation with the States administering plans under title IV of the Social Security Act, the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

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[*Internal Reference.*—The catchline to Social Security Act title IV has a footnote referring to P.L. 99-570.]

P.L. 99-576, Approved October 28, 1986 (100 Stat. 3248)
Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

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SEC. 233. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM.

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(c) [42 U.S.C. 1395cc note] REPORT.—(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

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[*Internal Reference.*—Social Security Act §1866(a) has a footnote referring to P.L. 99-576.]

P.L. 99-643, Approved November 10, 1986 (100 Stat. 3574)
Employment Opportunities for Disabled Americans Act

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SEC. 6. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

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(b) [42 U.S.C. 1383c note] STATE DETERMINATIONS.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

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[*Internal Reference.*—Social Security Act §1634(c) has a footnote referring to P.L. 99-643.]

P.L. 99-660, Approved November 14, 1986 (100 Stat. 3743)
Title IV—Health Care Quality Improvement Act of 1986

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TITLE IV—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

SEC. 401. [42 U.S.C. 11101 note] SHORT TITLE.
This title may be cited as the "Health Care Quality Improvement Act of 1986".

SEC. 402. [42 U.S.C. 11101] FINDINGS.
The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

PART A—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

SEC. 411. [42 U.S.C. 11111] PROFESSIONAL REVIEW.

(a) IN GENERAL.—

(1) LIMITATION ON DAMAGES FOR PROFESSIONAL REVIEW ACTIONS.—If a professional review action (as defined in section 431(9)) of a professional review body meets all the standards specified in section 412(a), except as provided in subsection (b)—

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 4C of the Clayton Act, 15 U.S.C. 15C, where such an action is otherwise authorized.

(2) PROTECTION FOR THOSE PROVIDING INFORMATION TO PROFESSIONAL REVIEW BODIES.—Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the

United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) EXCEPTION.—If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 423(a), the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 423(a), the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) TREATMENT UNDER STATE LAWS.—

(1) PROFESSIONAL REVIEW ACTIONS TAKEN ON OR AFTER OCTOBER 14, 1989.—Except as provided in paragraph (2), subsection (a) shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) EXCEPTIONS.—

(A) STATE EARLY OPT-IN.—Subsection (a) shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B) STATE OPT-OUT.—Subsection (a) shall not apply to State laws in a State for actions commenced on or after October 14, 1989, if the State by legislation elects such treatment.

(C) EFFECTIVE DATE OF ELECTION.—An election under State law is not effective, for purposes of subparagraphs (A) and (B), for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

SEC. 412. [42 U.S.C. 11112] STANDARDS FOR PROFESSIONAL REVIEW ACTIONS.

(a) IN GENERAL.—For purposes of the protection set forth in section 411(a), a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 411(a) unless the presumption is rebutted by a preponderance of the evidence.

(b) ADEQUATE NOTICE AND HEARING.—A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

(1) NOTICE OF PROPOSED ACTION.—The physician has been given notice stating—

(A)(i) that a professional review action has been proposed to be taken against the physician,

(ii) reasons for the proposed action,

(B)(i) that the physician has the right to request a hearing on the proposed action,

(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

(C) a summary of the rights in the hearing under paragraph (3).

(2) NOTICE OF HEARING.—If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) CONDUCT OF HEARING AND NOTICE.—If a hearing is requested on a timely basis under paragraph (1)(B)—

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i) before an arbitrator mutually acceptable to the physician and the health care entity,

(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

(c) ADEQUATE PROCEDURES IN INVESTIGATIONS OR HEALTH EMERGENCIES.—For purposes of section 411(a), nothing in this section shall be construed as—

(1) requiring the procedures referred to in subsection (a)(3)—

(A) where there is no adverse professional review action taken, or

(B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

SEC. 413. [42 U.S.C. 11113] PAYMENT OF REASONABLE ATTORNEYS' FEES AND COSTS IN DEFENSE OF SUIT.

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 412(a) and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

SEC. 414. [42 U.S.C. 11114] GUIDELINES OF THE SECRETARY.

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 412(a).

SEC. 415. [42 U.S.C. 11115] CONSTRUCTION.

(a) IN GENERAL.—Except as specifically provided in this part, nothing in this part shall be construed as changing the liabilities or immunities under law.

(b) SCOPE OF CLINICAL PRIVILEGES.—Nothing in this part shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) TREATMENT OF NURSES AND OTHER PRACTITIONERS.—Nothing in this part shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) TREATMENT OF PATIENT MALPRACTICE CLAIMS.—Nothing in this title shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

SEC. 416. [42 U.S.C. 11111 note] EFFECTIVE DATE.

This part shall apply to professional review actions commenced on or after the date of the enactment of this Act.

PART B—REPORTING OF INFORMATION

SEC. 421. [42 U.S.C. 11131] REQUIRING REPORTS ON MEDICAL MALPRACTICE PAYMENTS.

(a) IN GENERAL.—Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances thereof.

(b) INFORMATION TO BE REPORTED.—The information to be reported under subsection (a) includes—

(1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,

(2) the amount of the payment,

(3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) SANCTIONS FOR FAILURE TO REPORT.—Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than $10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(d) REPORT ON TREATMENT OF SMALL PAYMENTS.—The Secretary shall study and report to Congress, not later than two years after the date of the enactment of this Act, on whether information respecting small payments should continue to be required to be reported under subsection (a) and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

SEC. 422. [42 U.S.C. 11132] REPORTING OF SANCTIONS TAKEN BY BOARDS OF MEDICAL EXAMINERS.

(a) IN GENERAL.—

(1) ACTIONS SUBJECT TO REPORTING.—Each Board of Medical Examiners—

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 424, the information described in paragraph (2).

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) FAILURE TO REPORT.—If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a), the Secretary shall designate another qualified entity for the reporting of information under section 423.

SEC. 423. [42 U.S.C. 11133] REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES.

(a) REPORTING BY HEALTH CARE ENTITIES.—

(1) ON PHYSICIANS.—Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3).

(2) PERMISSIVE REPORTING ON OTHER LICENSED HEALTH CARE PRACTITIONERS.—A health care entity may report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) INFORMATION TO BE REPORTED.—The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) REPORTING BY BOARD OF MEDICAL EXAMINERS.—Each Board of Medical Examiners shall report, in accordance with section 424, the information reported to it under subsection (a) and known instances of a health care entity's failure to report information under subsection (a)(1).

(c) SANCTIONS.—

(1) HEALTH CARE ENTITIES.—A health care entity that fails substantially to meet the requirement of subsection (a)(1) shall lose the protections of section 411(a)(1) if the Secretary publishes the name of the entity under section 411(b).

(2) BOARD OF MEDICAL EXAMINERS.—If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b), the Secretary shall designate another qualified entity for the reporting of information under subsection (b).

(d) REFERENCES TO BOARD OF MEDICAL EXAMINERS.—Any reference in this part to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 422(a) or subsection (b), a reference to such other qualified entity as the Secretary designates.

SEC. 424. [42 U.S.C. 11134] FORM OF REPORTING.

(a) TIMING AND FORM.—The information required to be reported under sections 421, 422(a), and 423 shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after the date of the enactment of this Act) specified by the Secretary.

(b) TO WHOM REPORTED.—The information required to be reported under sections 421, 422(a), and 423(b) shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this part.

(c) REPORTING TO STATE LICENSING BOARDS.—

(1) MALPRACTICE PAYMENTS.—Information required to be reported under section 421 shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) REPORTING TO OTHER LICENSING BOARDS.—Information required to be reported under section 423(b) shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b).

SEC. 425. [42 U.S.C. 11135] DUTY OF HOSPITALS TO OBTAIN INFORMATION.

(a) IN GENERAL.—It is the duty of each hospital to request from the Secretary (or the agency designated under section 424(b)), on and after the date information is first required to be reported under section 424(a))—

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this part concerning the physician or practitioner, and

(2) once every 2 years information reported under this part concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) FAILURE TO OBTAIN INFORMATION.—With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) is presumed to have knowledge of any information reported under this part to the Secretary with respect to the physician or practitioner.

(c) RELIANCE ON INFORMATION PROVIDED.—Each hospital may rely upon information provided to the hospital under this title and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

SEC. 426. [42 U.S.C. 11136] DISCLOSURE AND CORRECTION OF INFORMATION.

With respect to the information reported to the Secretary (or the agency designated under section 424(b)) under this part respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

SEC. 427. [42 U.S.C. 11137] MISCELLANEOUS PROVISIONS.

(a) PROVIDING LICENSING BOARDS AND OTHER HEALTH CARE ENTITIES WITH ACCESS TO INFORMATION.—The Secretary (or the agency designated under section 424(b)) shall, upon request, provide information reported under this part with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Information reported under this part is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 425 (as specified in regulations by the Secretary)[1], or in accordance with regulations of the Secretary promulgated pursuant to subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this part that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential.[2] The Secretary (or the agency designated under section 424(b)), on application by any person, shall prepare such information in such form and shall disclose such information in such form.[3]

(2) PENALTY FOR VIOLATIONS.—Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(3) USE OF INFORMATION.—Subject to paragraph (1), information provided under section 425 and subsection (a) is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) FEES.—The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 426. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 424(b)) to cover such costs.[4]

(c) RELIEF FROM LIABILITY FOR REPORTING.—No person or entity (including the agency designated under section 424(b))[5] shall be held liable in any civil action with respect to any report made under this part (including information provided under subsection (a)[6] without knowledge of the falsity of the information contained in the report.

(d) INTERPRETATION OF INFORMATION.—In interpreting information reported under this part, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

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[1] P.L. 100-177, §402(a)(1)(A), struck out "with respect to medical malpractice actions" and substituted "as necessary to carry out subsections (b) and (c) of section 425 (as specified in regulations by the Secretary)".

[2] P.L. 100-177, §402(a)(1)(B), added this sentence.

[3] See footnote 2.

[4] P.L. 100-177, §402(b), added paragraph (4).

[5] P.L. 100-177, §402(a)(2)(A), inserted "(including the agency designated under section 424(b))".

[6] P.L. 100-177, §402(a)(2)(B), inserted "(including information provided under subsection (a)". As in original. No closing parenthesis.

PART C—DEFINITIONS AND REPORTS

SEC. 431. [42 U.S.C. 11151] DEFINITIONS.

In this title:

(1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term "Board of Medical Examiners" includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term "health care entity" means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term "health care entity" does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term "hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

(6) The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term "medical malpractice action or claim" means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this title, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter than does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activitiy of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

SEC. 432. [42 U.S.C. 11152] REPORTS AND MEMORANDA OF UNDERSTANDING.

(a) ANNUAL REPORTS TO CONGRESS.—The Secretary shall report to Congress, annually during the three years after the date of the enactment of this Act, on the implementation of this title.

(b) MEMORANDA OF UNDERSTANDING.—The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of part B of this title to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) MEMORANDUM OF UNDERSTANDING WITH DRUG ENFORCEMENT ADMINISTRATION.—The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 304 of the Controlled Substances Act. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

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[*Internal References.*—Social Security Act §1921(b) and (d) cite the Health Care Quality Improvement Act of 1986. Title XVIII has a footnote referring to P.L. 99-660.]

P.L. 100-77, Approved July 22, 1987 (100 Stat. 482)
Stewart B. McKinney Homeless Assistance Act

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TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

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Subtitle E—Miscellaneous Provisions

SEC. 761. [42 U.S.C. 11471] STUDY OF YOUTH HOMELESSNESS.

(a) AUTHORIZATION.—The Secretary of Health and Human Services may make demonstration grants to a qualified applicant for a special research project to study the underlying causes of youth homelessness.

(b) FUNDING.—The Secretary of Health and Human Services shall make available not to exceed $50,000 of the funds appropriated under section 426 of the Social Security Act for fiscal year 1987 for the purpose of making a grant under this section.

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[*Internal Reference.*—Social Security Act §426 has a footnote referring to P.L. 100-77.]

P.L. 100-93, Approved August 18, 1987 (101 Stat. 680)
Medicare and Medicaid Patient and Program Protection Act of 1987

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) [42 U.S.C. 1305 note] SHORT TITLE.—This Act may be cited as the "Medicare and Medicaid Patient and Program Protection Act of 1987".

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SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.

(a) [42 U.S.C. 1320a-7b note] REGULATIONS.—The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).

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SEC. 15. EFFECTIVE DATES.

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(f) [42 U.S.C. 1320a-7 note] TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII if payment to the person has been denied under section 1862(d) of the Social Security Act, as in effect before the effective date specified in subsection (a).

[*Internal References.*—Social Security Act §§1128A(a), 1128B(b), and 1862(e) cite the Medicare and Medicaid Patient and Program Protection Act of 1987. Social Security Act §1128B(b) and the catchline to title XVIII have footnotes referring to P.L. 100-93.]

P.L. 100-119, Approved September 29, 1987 (101 Stat. 754)
Title I - Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987

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SEC. 107. SPECIAL RULES FOR MEDICARE PROGRAM.

(a) [42 U.S.C. 1395ww note] TEMPORARY EXTENSION OF PAYMENT POLICIES FOR INPATIENT HOSPITAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, with respect to payment for inpatient hospital services under section 1886 of the Social Security Act:

(A) TEMPORARY FREEZE IN PPS HOSPITAL RATES.—For purposes of subsection (d) of such section for discharges occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the "extension period"), the applicable percentage increase under subsection (b)(3)(B) of such section with respect to fiscal year 1988 is deemed to be 0 percent.

(B) TEMPORARY FREEZE IN PAYMENT BASIS.—

(i) EXTENSION OF BLENDED DRG RATE.—For purposes of subsection (d)(1) of such section, the "applicable combined adjusted DRG prospective payment rate" for discharges occurring—

(I) during the extension period is the rate specified in subsection (d)(1)(D)(ii) of such section, or

(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

(ii) EXTENSION OF HOSPITAL-SPECIFIC PAYMENT.—For the first 51 days of a hospital cost reporting period beginning during fiscal year 1988, payment shall be made under clause (ii) (rather than clause (iii)) of subsection (d)(1)(A) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent[1].

(C) TEMPORARY FREEZE IN AMOUNTS OF PAYMENT FOR CAPITAL.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

(D) TEMPORARY FREEZE IN RETURN ON EQUITY REDUCTIONS.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, subsection (g)(2) of such section shall be applied as though the applicable percentage were 75 percent.

(E) TEMPORARY FREEZE IN PAYMENTS RATES FOR PPS-EXEMPT HOSPITALS.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.

* * * * * * *

(b) [42 U.S.C. 1395ww note] FREEZING CERTAIN CHANGES IN MEDICARE PAYMENT REGULATIONS AND POLICIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

(B) any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

(C) any final regulation that changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services.

The final regulation of the Health Care Financing Administration published on September 1, 1987 (52 Federal Register 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

(2) OTHER COST SAVINGS POLICIES.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (relating to periodic interim payments).

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[*Internal Reference.*—The catchline to Social Security Act §1886 has a footnote referring to P.L. 100-119.]

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[1]P.L. 100-203, §4002(f)(2), inserted ", the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent".

P.L. 100-139, Approved October 26, 1987 (101 Stat. 822)
'Cow Creek Band of Umpqua Tribe of Indian Distribution of Judgment Funds Act of 1987

* * * * * * *

SEC. 3. [None assigned.] JUDGMENT DISTRIBUTION PLAN.

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53-81L shall be distributed and used in the manner provided in this Act.

* * * * * * *

SEC. 4. [None assigned.] DISTRIBUTION AND USE OF FUNDS.

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(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds by the tribe's governing body:

* * * * * * *

(6) Benefits received pursuant to this Act shall be considered supplementary to existing Federal programs and their existence shall not be used by any Federal agency as a basis to deny eligibility in whole or in part for existing Federal programs.

* * * * * * *

[*Internal References.*—Social Security Act title IV, Part B, and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), and 1613(a) have footnotes referring to P.L. 100-139.]

P.L. 100-177, Approved December 1, 1987 (101 Stat. 986)
Public Health Service Amendments of 1987

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SEC. 204. [42 U.S.C. 254o note] SPECIAL REPAYMENT PROVISIONS.

(a) ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—An individual who—

(A)(i) breached a written contract entered into under section 338A of the Public Health Service Act (42 U.S.C. 254l) by failing either to begin such individual's service obligation in accordance with section 338C of such Act (as redesignated by section 201(2) of this Act) or to complete such service obligation; or

(ii) otherwise breached such a contract; and

(B) as of November 1, 1987, is liable to the United States under section 338E(b) of such Act (as redesignated by section 201(2) of this Act),

shall be relieved of liability to the United States under such section if the individual provides notice to the Secretary in accordance with paragraph (2) and provides service in accordance with a written contract with the Secretary that obligates the individual to provide service in accordance with subsection (b) or (c). The Secretary may exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

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[*Internal Reference.*—Social Security Act §1892(a) cites the Public Health Service Amendments of 1987.]

P.L. 100-203, Approved December 22, 1987 (101 Stat. 1330)
Omnibus Budget Reconciliation Act of 1987

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SEC. 4001. [2 U.S.C. 902 note] EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) March 31, 1988, with respect to payments for inpatient hospital services under such title (including payments under section 1886 of such title attributable or allocated to part A of such title); and

(2) December 31, 1987, with respect to payments for other items and services under part A of such title.

SEC. 4002. BASIC HOSPITAL PROSPECTIVE PAYMENT RATES.

* * * * * * *

(g) [42 U.S.C. 1395ww note] EFFECTIVE DATES.—

(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

(A) the amendments made by subsections (a) and (c) shall apply to payments made under section 1886(d)(1)(A)(iii)[1] of the Social Security Act on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B)[2] of such Act) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(b)(3)(B)[3] of such Act) for the—

(i) first 51 days of the cost reporting period shall be 0 percent,

(ii) next 132 days of such period shall be 2.7 percent, and

(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendments made by subsection (e) shall apply to cost reporting periods beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act were equal to the product of 2.7 percent and the ratio of 315 to 366; and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

* * * * * * *

(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act (as amended by subsection (c)) for fiscal year 1988, the reference to "the respective average

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[1] P.L. 100-360, §411(b)(1)(I)(i), struck out "1886(a)(1)(A)(iii)" and substituted "1886(d)(1)(A)(iii)".
[2] P.L. 100-360, §411(b)(1)(I)(ii), struck out "1886(d)(3)(B)" and substituted "1886(b)(3)(B)".
[3] See footnote 2.

standardized amount computed for the previous fiscal year under this subparagraph" is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

(6) DEFINITION.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(1)(B)[4] of the Social Security Act.

SEC. 4003. INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT AND REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.

* * * * * * *

(d) [None assigned.] SPECIAL RULE.—In the case of a hospital which—

(1) consists of 2 inpatient hospital facilities which are more than 4 miles apart and each of which is in a separate political jurisdiction within the same State and one of which meets the criteria under section 1886(d)(5)(F) of the Social Security Act for serving a significantly disproportionate number of low-income patients as if that facility were a separate hospital; and

(2) receives payments (other than under section 1886(d)(5)(F) of such Act)[5] for inpatient hospital services under title XVIII of the Social Security Act which are less than the hospital's reasonable costs of such services[6],

the Secretary of Health and Human Services, upon application by the hospital, may treat each of the facilities of the[7] hospital as separate hospitals for purposes of applying section 1886(d)(5)(F) of the Social Security Act, for discharges occurring on or after October 1, 1988.

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SEC. 4004. PROVISIONS RELATING TO WAGE INDEX.

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(b) [42 U.S.C. 1395ww note] CLINIC HOSPITAL WAGE INDICES.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term "wage costs" does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.

SEC. 4005. RURAL HOSPITALS.

(a) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

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(2) [None assigned.] LOCATION OF HOSPITAL.—For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin.

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(b) EXPANSION OF SWING-BED PROGRAM.—

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(3) [42 U.S.C. 1395tt note] REPORT.—The Secretary of Health and Human Services shall report to Congress, not later than February 1, 1989, concerning—

(A) the proportion of admissions to hospitals for extended care services under section 1883 of the Social Security Act which are denied or approved by a peer review organization under section 1154(a)(1) of such Act, and

(B)[8] recommendations for methods of encouraging hospitals that—

(i) have a low occupancy rate,

(ii) are eligible to enter (but have not entered) into an agreement under section 1883 of such Act, and

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[4] P.L. 100-360, §411(b)(1)(D)(iii), struck out "1886(d)(10)(B)" and substituted "1886(d)(1)(B)".
[5] P.L. 100-360, §411(b)(2)(A)(i), inserted "(other than under section 1886(d)(5)(F) of such Act)".
[6] P.L. 100-360, §411(b)(2)(A)(ii), inserted "of such services".
[7] P.L. 100-360, §411(b)(2)(B), inserted "the".
[8] P.L. 100-360, §411(b)(4)(E) [as added by P.L. 100-485, §608(d)(18)(C)], struck out "on".

(iii) are located in areas with a need for additional providers of extended care services,

to enter into such agreements.

* * * * * * *

(c) PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

* * * * * * *

(2) * * *

(B) [42 U.S.C. 1395ww note] The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (1)(B) does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.

(d) MEDICARE CLASSIFICATION OF RURAL REFERRAL CENTERS.—

* * * * * * *

(2) [42 U.S.C. 1395ww note] STUDY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for a study of the criteria used for the classification of hospitals as rural referral centers under section 1886(d)(5)(C)(i) of the Social Security Act. The study shall include an examination of—

(i) the extent that hospitals classified as rural referral centers receive more or less than their actual costs of providing inpatient hospital services, and

(ii) the appropriateness of providing for payment for such centers at a rate other than the rate for a hospital located in an other urban area.

(B) REPORT.—The Secretary shall report to Congress, by not later than March 1, 1989, on the study conducted under subparagraph (A) and on recommendations for the criteria that should be applied under section 1886(d)(5)(C)(i) of the Social Security Act for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after October 1, 1989.

(e) [42 U.S.C. 1395ww note] GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

(A) Changes in clinical practice patterns.

(B) Changes in service populations.

(C) Declining demand for acute-care inpatient hospital capacity.

(D) Declining ability to provide appropriate staffing for inpatient hospitals.

(E) Increasing demand for ambulatory and emergency services.

(F) Increasing demand for appropriate integration of community health services.

(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems.

(2) For purposes of this subsection, the term "eligible small rural hospital" means any non-Federal, short-term general acute care hospital that—

(A) is located in a rural area (as determined in accordance with subsection (d)),

(B) has less than 100 beds, and

(C) is not for profit.

(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the

factors specified in paragraph (1) may submit an application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

(B) The Governor shall transmit any application submitted pursuant to subparagraph (A) to the Secretary not later than 30 days after it is received by the Governor, accompanied by any comments with respect to the application that the Governor deems appropriate.

(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act.

(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

(A) any comments received under paragraph (3)(B) with respect to a proposed project;

(B) the effect that the project will have on—

(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

(i) the primary market or service area of the hospital, and

(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

(D) the degree of coordination that may be expected between the proposed project and—

(i) other local or regional health care providers, and

(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 2 years.

(7)(A) Except as provided in subparagraphs (D) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act) of the project.

(8)(A) A hospital receiving a grant under this section shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Administrator shall report to the Congress at least once every 6 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for each of the fiscal years 1989 and 1990.

SEC. 4006. PAYMENTS FOR HOSPITAL CAPITAL.

* * * * * * *

(c) [None assigned.] PROPAC REPORT ON ADJUSTMENT FOR HOSPITAL OCCUPANCY.—The Prospective Payment Assessment Commission shall study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, by not later than May 1, 1988, on the suitability and feasibility of linking payment for capital-related costs under part A of title XVIII of the Social Security Act to hospital occupancy rates.

SEC. 4007. [42 U.S.C. 1395ww note] REPORTING HOSPITAL INFORMATION.

(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updated[9] analysis of the differences between preliminary and settled cost reports).[10]

* * * * * * *

(c) DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services shall provide for a[11] demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In conducting[12] the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

(2) The information described in this paragraph is as follows:

(A) Hospital discharges (classified[13] by class of primary payer).

(B) Patient days (classified[14] by class of primary payer).

(C) Licensed beds, staffed beds, and occupancy[15].

(D)[16] Inpatient charges and revenues (classified by class of primary payer).

(E)[17] Outpatient charges and revenues (classified by class of primary payer).

(F)[18] Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

(G)[19] Reasonable costs.

(H)[20] Other income.

(I)[21] Bad debt and charity care.

(J)[22] Capital acquisitions.

(K)[23] Capital assets.

The Secretary shall develop a definition of "outpatient visit" for purposes of reporting hospital information.[24]

(3) The Secretary shall develop the system under subsection (c) in a manner so as —

(A) to facilitate the submittal of the information in the report in an electronic form, and

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[9]P.L. 100-360, §411(b)(6)(A), struck out "updata" and substituted "updated".

[10]P.L. 100-360, §411(b)(6)(B), amended P.L. 100-203, §4007(b) in its entirety. Formerly subsection (b) read as follows:

"(b) REPORTING OF INFORMATION ELECTRONICALLY.—

"(1) Subject to paragraph (2), with respect to hospital cost reporting periods beginning on or after October 1, 1989, the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under the medicare program.

"(2) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to a small percentage of medicare volume).".

[11]P.L. 100-360, §411(b)(6)(C)(i)(I), struck out "3-year".

[12]P.L. 100-360, §411(b)(6)(C)(i)(II), struck out "contracting" and substituted "conducting".

[13]P.L. 100-360, §411(b)(6)(C)(ii), struck out "by category of service and".

[14]See footnote 13.

[15]P.L. 100-360, §411(b)(6)(C)(iii), struck out "(by category of service)".

[16]P.L. 100-360, §411(b)(6)(C)(iv), struck out subparagraph (D) and redesignated the former subparagraph (E) as subparagraph (D). The former subparagraph (D) read as follows:

"(D) Outpatient visits (classified by class of primary payer).".

[17]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (F) as subparagraph (E).

[18]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (G) as subparagraph (F).

[19]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (H) as subparagraph (G).

[20]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (I) as subparagraph (H).

[21]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (J) as subparagraph (I) and §411(b)(6)(C)(v) amended subparagraph (I), as so redesignated, in its entirety. Formerly subparagraph (I) read as follows:

"(I) Uncompensated care (classified by bad debt and charity care).".

[22]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (K) as subparagraph (J).

[23]P.L. 100-360, §411(b)(6)(C)(iv), redesignated subparagraph (L) as subparagraph (K).

[24]P.L. 100-360, §411(b)(6)(C)(vi), added this sentence.

(B) to be compatible with the needs of the medicare prospective payment system.

(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

(5) In paragraph (2)[25] :

(A) The term "bad debt and charity care" has such meaning[26] as the Secretary establishes.

(B) The term "class" means, with respect to payers at least[27], the programs under this title XVIII[28] of the Social Security Act, a State plan approved under title XIX of such Act, other third party-payers, and other persons (including self-paying individuals)[29].

(6) The Secretary shall set aside at least a total of $3,000,000 for[30] fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds[31] to develop the format, according to paragraph (1) and[32] for data collection and analysis, but total funds shall not exceed $15,000,000[33].

(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

SEC. 4008. OTHER PROVISIONS RELATING TO PAYMENT FOR INPATIENT HOSPITAL SERVICES.

(a) [None assigned.] MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this Act, and before January 1, 1989, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

* * * * * * *

(c) [42 U.S.C. 1395f note] CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES.—In making payments to hospitals under title XVIII of the Social Security Act, the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency[34]).

(d) [42 U.S.C. 1395ww note] HOSPITAL OUTLIER PAYMENTS AND POLICY.—

(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

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[25] P.L. 100-360, §411(b)(6)(C)(vii), struck out "(3)" and substituted "(2)".

[26] P.L. 100-360, §411(b)(6)(C)(viii), struck out "terms 'bad debt' and 'charity care' have such meanings" and substituted "term 'bad debt and charity care' has such meaning".

[27] P.L. 100-360, §411(b)(6)(C)(ix)(I) [as amended by P.L. 100-485, §608(d)(18)(D)(i)], inserted "at least".

[28] P.L. 100-360, §411(b)(6)(C)(ix)(II), struck out "VIII" and substituted "XVIII".

[29] P.L. 100-360, §411(b)(6)(C)(ix)(III) [as amended by P.L. 100-485, §608(d)(18)(D)(ii)], struck out "self-paying individuals" and substituted "other persons (including self-paying individuals)".

[30] P.L. 100-360, §411(b)(6)(C)(x)(I), struck out "$1,000,000 for each of" and substituted "a total of $3,000,000 for".

[31] P.L. 100-360, §411(b)(6)(C)(x)(II) [as amended by P.L. 100-485, §608(d)(18)(D)(iii)], inserted "or from operations funds".

[32] P.L. 100-360, §411(b)(6)(C)(x)(III), struck out ", and at least $2,000,000 from program operations funds" and substituted "and".

[33] P.L. 100-360, §411(b)(6)(C)(x)(IV), struck out "over 3 years".

[34] P.L. 100-647, §8402, inserted ", including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency".

(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886(d)[35] of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

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SEC. 4009. MISCELLANEOUS PROVISIONS.

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(b) [42 U.S.C. 1395y note] DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY.—For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act, the Secretary shall treat such a hospital as meeting such criteria if—

(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

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(h) [42 U.S.C. 1395ww note] PROPAC STUDIES AND REPORTS.—

(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D))[36] of the Social Security Act) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.

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[35] P.L. 100-360, §411(b)(7), struck out "1886" and substituted "1886(d)".
[36] As in original. Closing parenthesis should be stricken.

(i) [42 U.S.C. 1395ww note] SPECIAL RULE.—In the case of urban areas in New England[37], the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act, as amended by section 4002(b)[38] of this subtitle, as though 970,000 were substituted for 1,000,000.

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SEC. 4012. PAYMENTS FOR HOSPITAL SERVICES.

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(c) [42 U.S.C. 1395mm note] IMPLEMENTATION.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act medicare DRG rates for payments required by the amendment made by subsection (a)[39] and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.

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SEC. 4015. [42 U.S.C. 1395mm note] MEDICARE PAYMENT DEMONSTRATION PROJECTS.

(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") may provide for capitation demonstration projects (in this subsection referred to as "projects") with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act, more than $600,000,000 in any fiscal year for all such projects.

(3) The per capita rate of payment under a project—

(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

(B) the rate of payment may not exceed the lesser of—

(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act) for classes of individuals described in section 1876(a)(1)(B) of that Act, or

(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4)) for such classes.

(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act), the project—

(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

(6) The requirements of—

(A) subsection (c)(3)(C) (relating to dissemination of information),

(B) subsection (c)(3)(E) (annual statement of rights),

(C) subsection (c)(5) (grievance procedures),

(D) subsection (c)(6) (on-going quality),

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[37] P.L. 100-360, §411(b)(8)(C), struck out "New England county metropolitan areas" and substituted "urban areas in New England".

[38] P.L. 100-360, §411(b)(8)(C), struck out "4001(b)" and substituted "4002(b)".

[39] P.L. 100-360, §411(c)(2)(B), struck out "paragraph (2)" and substituted "subsection (a)".

(E) subsection (g)(6) (relating to prompt payment of claims),

(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

(G) subsection (i)(6) (relating to providing necessary services), and

(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act and the benefits available through any alternative plans in which the individual can enroll through the[40] employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

(8) A project shall comply with all applicable State laws.

(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect[41] on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act, including—

(A) computing adjustments to the average per capita cost under section 1876 of such Act on the basis of health status or prior utilization of services, and

(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

(2) No project may be conducted under this subsection—

(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act), and

(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act.

(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.

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SEC. 4017. [42 U.S.C. 1395mm note] GAO STUDY AND REPORTS ON MEDICARE CAPITATION.

(a) STUDY.—The Comptroller General shall conduct a study on medicare capitation rates that shall include an analysis and assessment of—

(1) the current method for computing per capita rates of payment under section 1876 of the Social Security Act (including the method for determining the United States per capita cost);

(2) the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors;

(3) ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act (including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas);

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[40] P.L. 100-360, §411(c)(5)(A) [as added by P.L. 100-485, §608(d)(19)(C)], struck out a second "the".
[41] P.L. 100-360, §411(c)(5)(B) [as added by P.L. 100-485, §608(d)(19)(C)], struck out "affect" and substituted "effect".

(4) the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means;

(5) approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases;

(6) ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and

(7) methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas (while maintaining cost savings).

(b) REPORTS.—

(1) Not later than January 1 of 1989 and 1990, the Comptroller General shall submit to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives interim reports on the progress of the study conducted under subsection (a).

(2) Not later than January 1, 1991, the Comptroller General shall submit to each such committee a final report on the results of such study.

SEC. 4018. SPECIAL RULES.

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(b) [None assigned.] EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by paragraph (2) of this subsection).

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(4) The Secretary of Health and Human Services shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

[(c) Repealed.[42]]

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SEC. 4026. HOME HEALTH AGENCY COST LIMITS.

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(b) [None assigned.] STUDY OF LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1989[43], on—

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

SEC. 4027. [42 U.S.C. 1395n note] HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for

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[42] P.L. 100-647, §8412(a)(2), repealed subsection (c). Formerly subsection (c) read as follows:

"(c) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

"(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

"(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such organization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.".

[43] P.L. 100-360, §411(d)(5)(C), struck out "1988" and substituted "1989".

services furnished under the medicare and medicaid programs. The project shall be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations. The Secretary shall assure that services are first furnished under the project not later than April 1, 1989[44], and, for this purpose, the Secretary may reinstate a previously awarded contract, or award a sole source contract, to carry out the project.

(b) FUNDING.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under subsection (a) of this section as they apply to experiments under subsection (a)(1) of that section.

(c) REPORT.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act, an interim report on the demonstration project and, not later than four years after the date of the enactment of this Act, a final report on the results of the project.

SEC. 4031. PAYMENT CYCLE STANDARDS.

(a) PAYMENT FLOOR STANDARDS.—

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(3) * * *

(B) [42 U.S.C. 1395h note] The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

(b) [42 U.S.C. 1395h note] PROHIBITION OF OTHER POLICIES INTENDED TO SLOW DOWN MEDICARE PAYMENTS.—Notwithstanding any other provision of law, except as specifically provided in this section, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(c) [42 U.S.C. 1395h note] BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

SEC. 4032. DENIALS AND RECONSIDERATIONS OF CLAIMS FOR HOME HEALTH SERVICES, EXTENDED CARE SERVICES, AND POST-HOSPITAL EXTENDED CARE SERVICES.

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(c) EFFECTIVE DATE.—

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(2) [42 U.S.C. 1395h note] The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) on a timely basis.

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SEC. 4036. END-STAGE RENAL DISEASE AMENDMENTS.

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(d) STUDIES OF END-STAGE RENAL DISEASE PROGRAM.—

(1) [42 U.S.C. 1395rr note] The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall arrange for a study of the end-stage renal disease program within the medicare program.

(2) [42 U.S.C. 1395rr note] Among other items, the study shall address—

(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(C) the effect of reimbursement on quality of treatment;

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[44] P.L. 100-360, §411(d)(6), struck out "July 1, 1988" and substituted "April 1, 1989".

(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

(3) [42 U.S.C. 1395rr note] The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act, a report on the study.

(4) [42 U.S.C. 1395rr note] The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

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SEC. 4037. [42 U.S.C. 1395ff note] MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

SEC. 4038. [42 U.S.C. 1395ww note] RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with four sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

(c) SELECTION.—In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(1) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(2) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act—

(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act and shall be conducted for a period of three years.

(f) DEFINITION.—In this section, the term "sponsoring hospital" means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

SEC. 4039. MISCELLANEOUS AND TECHNICAL PROVISIONS.

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(d) [42 U.S.C. 1395ww note] EXTEND AND CLARIFY PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before October 15, 1989[45], any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1989 or in fiscal year 1990[46] of more than $50,000,000.

(e) [42 U.S.C. 1395x note] MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES.—The Secretary of Health and Human Services shall not implement any voluntaryor mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

(f) [42 U.S.C. 1395x note] DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING THE STATUS OF ENTITIES.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act) for purposes of title XVIII of such Act—

(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

(2) until the Secretary publishes a final rule with respect to the deeming of the entity.

(g) [42 U.S.C. 1395hh note] USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle.

SEC. 4041. FREEZE IN PAYMENTS FOR PHYSICIANS' SERVICES; EXTENSION OF SEQUESTER ORDER.

(a) THREE-MONTH FREEZE ON INCREASES IN PHYSICIAN PAYMENTS.—

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(2) [42 U.S.C. 1395u note] EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the 3-month period beginning on January 1, 1988;

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

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[45] P.L. 100-360, §426(e)(1), struck out "1988" and substituted "1989".
[46] P.L. 100-360, §426(e)(2), inserted "or in fiscal year 1990".

(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.

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(b) [2 U.S.C. 902 note] EXTENSION OF REDUCTION UNDER SEQUESTER ORDER.—Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for physicians' services under part B of such title.

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SEC. 4043. INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS.

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(b) [42 U.S.C. 1395l note] STUDY.—The Secretary of Health and Human Services shall study and report to Congress, by not later than January 1, 1990, on the feasibility of making additional payments described in section 1833(m) of the Social Security Act with respect to physician services which are performed in health manpower shortage areas located in urban areas.

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SEC. 4048. PAYMENT FOR PHYSICIAN ANESTHESIA SERVICES.

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(b) [42 U.S.C. 1395u note] DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE.—The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act on and after January 1, 1989. Such guide shall be designed so as to result in expenditures under such title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(c) [42 U.S.C. 1395u note] STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES.—The Secretary of Health and Human Services shall conduct a study of the variations in conversion factors used by carriers under section 1842(b) of the Social Security Act to determine the prevailing charge for anesthesia services and shall report the results of the study and make recommendations for appropriate adjustments in such factors not later than January 1, 1989.

(d) [42 U.S.C. 1395u note] GAO STUDIES.—(1) The Comptroller General shall conduct a study—

(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

(B) to verify those times from patient medical records,

(C) to compare anesthesia times to average surgical times, and

(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a), and shall report to Congress on the results of such study by April 1, 1990.

SEC. 4049. FEE SCHEDULES FOR RADIOLOGIST SERVICES.

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(b) DEADLINES AND EFFECTIVE DATE.—

(1) [42 U.S.C. 1395m note] The Secretary of Health and Human Services shall propose[47] the relative value scale and fee schedules for radiologist services (under section 1834(b) of the Social Security Act) by not later than August 1, 1988, and shall report to Congress on the development of such fee schedules not later than August 1, 1988.

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SEC. 4050. [42 U.S.C. 1395l note] FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop—

(1) a relative value scale to serve as the basis for the payment for physician pathology services under part B of title XVIII of the Social Security Act,

(2) using such scale and appropriate conversion factors, proposed fee schedules (on a regional, statewide, or carrier service area basis) for payment for physician pathology services under such part, that could be implemented for such services furnished during 1990, and

(3) an appropriate index to be applied to updating such fee schedules annually for physician pathology services furnished in years after 1990.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the College of American Pathologists, and other organizations representing physicians who furnish physician pathology services and shall share with them the data and data analysis being used to make the determinations under subsection (a), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(c) CONSIDERATION.—In developing the fee schedules under subsection (a), the Secretary shall take into consideration variations in the cost of furnishing physician pathology services among geographic areas.

(d) REPORT.—The Secretary shall report, not later than April 1, 1989, to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the relative value scale, fee schedules, and the index developed under this section. Such report shall include recommendations on how to protect medicare beneficiaries against excessive charges for physician pathology services above the payment amounts established by the fee schedules.

SEC. 4051. ELIMINATION OF MARKUP FOR CERTAIN PURCHASED SERVICES.

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(b) [42 U.S.C. 1395u note] ADJUSTMENT IN MEDICARE PREVAILING CHARGES.—

(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act for diagnostic tests (described in section 1861(s)(3) of such Act, but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.

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[47] P.L. 100-360, §411(f)(8)(E), struck out "establish" and substituted "propose".

(c) [42 U.S.C. 1395u note] EFFECTIVE DATES.—

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(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) for items and services furnished no later than January 1, 1989.

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SEC. 4054[48]. APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE (MAAC).

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(b) [42 U.S.C. 1395u note] ADJUSTMENT.—In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.

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[SEC. 4055[49].]

SEC. 4056[50]. PHYSICIAN PAYMENT STUDIES.

(a) [42 U.S.C. 1395u note] DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES.—

(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation. The Secretary shall report to Congress on such study by not later than May 1, 1988.

(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act. In developing such definitions[51], to the extent practicable—

(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

(B) pre- and post-procedure services would be included in the procedure; and

(C) similar procedures would be listed together if the procedures are similar in resource requirements.

(b) [42 U.S.C. 1395w-1 note] EXPANSION OF RELATIVE VALUE SCALE (RVS) STUDY.—

(1) ADDITIONAL SERVICES.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act, to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology,[52] emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy, and for physicians who specialize in osteopathic procedures.

(2) NO DELAY IN CURRENT STUDY.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act. The Secretary shall report to Congress on the services described in paragraph (1) by not later than October 1, 1989.

(3) PROMPT SUBMITTAL OF STUDY RESULTS TO PHYSICIAN PAYMENT REVIEW COMMISSION.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a

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[48] P.L. 100-360, §411(f)(14), redesignated §4053 as §4054.

[49] P.L. 100-360, §411(f)(12)(A), amended §4055 [as redesignated by P.L. 100-360, §411(f)(14)] in its entirety, thereby striking out "Notwithstanding any other provision of law, payment under part B of title XVIII of the Social Security Act for physicians' services specified in section 1833(i)(1) of such Act and furnished on or after April 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis shall be subject to the deductible under section 1833(b) of such Act and 20 percent coinsurance.".

[50] P.L. 100-360, §411(f)(14), redesignated §4055 as §4056.

[51] P.L. 100-360, §411(f)(13)(A), struck out "list" and substituted "definitions".

[52] P.L. 100-360, §411(f)(13)(B), struck out "dermatology,".

cooperative agreement in the fulfillment of the requirement of section 1845(e) of such Act, with all relevant supporting data (including survey data, analytic data files, and file documentation), by no later than 30 days after the date the final report is received by the Secretary.

(c) [42 U.S.C. 1395l note] OTHER PHYSICIAN PAYMENT STUDIES.—

(1) FEE SCHEDULE IMPLEMENTATION.—The Secretary shall conduct a study of changes in the payment system for physicians' services, under part B of title XVIII of the Social Security Act, that would be required for the implementation of a national fee schedule for such services furnished on or after January 1, 1990. Such study shall identify any major technical problems related to such implementation and recommendations on ways in which to address such problems. The Secretary shall report to the Congress on such study by not later than July 1, 1989.

(2) VOLUME AND INTENSITY OF PHYSICIAN SERVICES.—The Secretary shall conduct a study of issues relating to the volume and intensity of physicians' services under part B of title XVIII of the Social Security Act, including—

(A) historical trends with regard to increases in the volume and intensity of physicians' services furnished on a per enrollee basis (with appropriate adjustments to account for changes in the demographic composition of the medicare population);

(B) geographic variations in volume and intensity in physicians' services;

(C) an analysis of the effectiveness of methods currently used under such part to ensure that payments under such part are made only for services which are medically necessary;

(D) the development and analysis of alternative methods to control the volume of services; and

(E) the impact of the implementation of the relative value scale developed under section 1845(e) of such Act on the volume and intensity of physicians' services.

The Secretary shall submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989.

(3) SURVEY OF OUT-OF-POCKET COSTS OF MEDICARE BENEFICIARIES FOR HEALTH CARE SERVICES.—The Secretary shall conduct a survey to determine the distribution of—

(A) the liabilities and expenditures for health care services of individuals entitled to benefits under title XVIII of the Social Security Act, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and

(B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized.

The Secretary shall report to Congress on such study by not later than July 1, 1990.

(d) [42 U.S.C. 1395l note] STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES.—

(1) IN GENERAL.—The Secretary shall study ways of modifying part B of title XVIII of the Social Security Act to permit adequate payment under such part for the costs associated with providing chemotherapy to cancer patients in physicians' offices. The study shall be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues.

(2) REPORT.—The Secretary shall report to Congress on the results of the study by not later than April 1, 1989.

SEC. 4061. [2 U.S.C. 902 note] EXTENSION OF REDUCTION FOR OTHER PART B ITEMS AND SERVICES PAYMENTS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for all items and services (other than physicians' services) under part B of such title.

SEC. 4062. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

(a) [42 U.S.C. 1395u note] 1-YEAR FREEZE ON CHARGE LIMITATIONS.—

(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.

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(c) [42 U.S.C. 1395m note] STUDY AND EVALUATION.—(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act.

(3) In this subsection, the term "covered item" has the meaning given such term in section 1834(a)(13) of the Social Security Act (as amended by subsection (b) of this section).

(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish[53], provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act, but only in a form which does not permit identification of individual suppliers[54].

(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

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SEC. 4063. PAYMENT FOR INTRAOCULAR LENSES.

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(d) [42 U.S.C. 1395u note] SPECIAL RULE.—With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act, in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with "plus" shall be considered to have been deleted.

SEC. 4064. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) [42 U.S.C. 1395l note] LIMITATION ON CHANGES IN FEE SCHEDULES.—[55]

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(b) FEE SCHEDULES AND PAYMENT LIMITS.—

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[53] P.L. 100-360, §411(g)(1)(C)(i), inserted "and payment of a reasonable copying fee which the Secretary may establish".

[54] P.L. 100-360, §411(g)(1)(C)(ii), inserted ", but only in a form which does not permit identification of individual suppliers".

[55] P.L. 100-360, §411(g)(3)(A), amended paragraphs (1) and (2) of §4064(a) in their entirety. Formerly paragraphs (1) and (2) read as follows:

"(1) 3-MONTH FREEZE IN FEE SCHEDULES.—Notwithstanding any other provision of law, any change in the fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of such Act which would have become effective for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988.

"(2) NO CPI INCREASE IN *1988*.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall not adjust the fee schedules established under section 1833(h) of the Social Security Act for 1988 to take into account any increase in the consumer price index.".

(4) [42 U.S.C. 1395l note] GAO STUDY OF FEE SCHEDULES.—The Comptroller General shall conduct a study of the level of the fee schedules established for clinical diagnostic laboratory services under section 1833(h)(2) of the Social Security Act to determine, based on the costs of, and revenues received for, such tests the appropriateness of such schedules. The Comptroller General shall report to the Congress on the results of such study by not later than January 1, 1990. Suppliers of such tests which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

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SEC. 4067. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

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(b) [42 U.S.C. 1395l note] REPORT ON RATES.—The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act for rural health clinic services provided by independent rural health clinics.

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SEC. 4071. COVERAGE OF INFLUENZA VACCINE AND ITS ADMINISTRATION.

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(b) [42 U.S.C. 1395x note] CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The provisions of subsection (e) of section 4072 of this subpart shall apply to this section in the same manner as it applies to section 4072.

(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.

SEC. 4072. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

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(e) [42 U.S.C. 1395x note] CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

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SEC. 4079. [42 U.S.C. 1395mm note] DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

(1) The term "community nursing and ambulatory care" means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term "eligible organization" means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization

meets the requirements of this subsection and subsection (e)[84] with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(7) Under a demonstration project under this section—

(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act for community nursing services; and

(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections

[84] P.L. 100-360, §411(h)(8), struck out "(d)" and substituted "(e)".

1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

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SEC. 4081. SUBMISSION OF CLAIMS TO SUPPLEMENTAL INSURANCE CARRIERS.

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(c) * * *

(2) [42 U.S.C. 1395ss note] (A) The amendments made by subsection (b) shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

(B) In the case of a State which the Secretary of Health and Human Services identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare[57] supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act, and

(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered or which has not enacted such legislation before July 1, 1988[58],

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.

SEC. 4082. REVISION OF PART B HEARINGS.

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(d) [42 U.S.C. 1395u note] GAO STUDY.—The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.

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SEC. 4085. MISCELLANEOUS AND TECHNICAL PROVISIONS.

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[57] P.L. 100-360, §411(i)(1)(D), struck out "medical" and substituted "medicare".

[58] P.L. 100-360, §411(i)(1)(E) [as amended by P.L. 100-485, §608(d)(24)(A)], inserted "or which has not enacted such legislation before July 1, 1988".

(e) [42 U.S.C. 1395u note] CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS.—The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.

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(h) [42 U.S.C. 1395u note] UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.—

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

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SEC. 4091. CONTRACT PROVISIONS.

(a) EXTENSIONS OF PEER REVIEW CONTRACT PERIOD.—

(1) [42 U.S.C. 1320c-2 note] ONE-TIME EXTENSION TO PERMIT STAGGERING OF EXPIRATION DATES.—

(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act, the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring[59] on or after the date of the enactment of this Act.

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SEC. 4094. PEER REVIEW NORMS AND EDUCATION.

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(e) [42 U.S.C. 1320c-5 note] TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility[60] of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

SEC. 4095. PREEXCLUSION HEARINGS.

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(c) [42 U.S.C. 1320c-5 note] TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

(1) for whom a notice of determination under section 1156(b) of the Social Security Act has been provided within 365 days before the date of the enactment of this Act,

(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

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[59] P.L. 100-360, §411(j)(1), struck out "renewals occurring" and substituted "contracts expiring".
[60] P.L. 100-360, §411(j)(3)(C) [as added by P.L. 100-485, §608(d)(25)(A)], struck out "feesability" and substituted "feasibility".

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

(d) [42 U.S.C. 1320c-5 note] REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.

(e) [None assigned.] REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

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SEC. 4102. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

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(c) [42 U.S.C. 1396n note] EXTENSION OF WAIVER.—In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.

SEC. 4103. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

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(b) [42 U.S.C. 1396d note] EFFECTIVE DATE.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

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SEC. 4106. [None assigned.] MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA.

For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made to California on or after July 1, 1983, in the case of a family consisting only of two individuals both of whom are adults and at least one of whom is aged, blind, or disabled, the "highest amount which would ordinarily be paid to a family of the same size" under the State's plan approved under part A of title IV of such Act shall, at California's option, be the amount determined by the State agency to be the amount of the aid which would ordinarily be payable under such plan to a family which consists

of one adult and two children and which is without any income or resources. Section 1902(a)(10)(C)(i)(III) of the Social Security Act shall not prevent California from establishing (under the previous sentence) an applicable income limitation for families described in that sentence which is greater than the income limitation applicable to other families, if California has an applicable income limitation under section 1903(f) of such Act which is equal to the maximum applicable income limitation permitted consistent with paragraph (1)(B) of such section for families other than those described in the previous sentence.

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SEC. 4113. HMO-RELATED PROVISIONS.

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(d)[61] [None assigned.] CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.—For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

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SEC. 4115. [None assigned.] STATE DEMONSTRATION PROJECTS.

(a) EXTENSION OF ARIZONA HEALTH CARE DEMONSTRATION PROJECT.—

(1) Notwithstanding any limitations contained in section 1115 of the Social Security Act, but subject to paragraphs (2) and (3) of this subsection, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") upon application shall renew until September 30, 1989, approval of demonstration project number 11-P-98239/9-05 ("Arizona Health Care Cost Containment System—AHCCCS—A statewide approach to cost effective health care financing"), including all waivers granted by the Secretary under such section 1115 as of September 30, 1987.

(2) The Secretary's renewed approval of the project under paragraph (1) shall—

(A) subject to paragraph (3) be on the same terms and conditions that existed between the applicant and the Secretary as of September 30, 1987; and

(B) remain in effect through September 30, 1989, unless the Secretary finds that the applicant no longer complies with such terms and conditions.

(3) Nothing in this subsection shall be construed to prohibit or require the Secretary from granting additional waivers to the applicant—

(A) for coverage of additional optional groups, and

(b) for coverage of long-term care and other services which were not covered as of September 30, 1987.

(b) NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.—

(1) Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), the State of New York (in this subsection referred to as the "State") may conduct a demonstration project in accordance with this subsection for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this subsection referred to as the "Program"), as the Program is set forth in the Prenatal Care Act of 1987 (enacted by the State in February 1987), as an alternative to existing Federal programs.

(2) Under the demonstration project conducted under this subsection—

(A) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(B) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individuals were receiving such benefits under such title (as determined by the Secretary).

(3) The Secretary may (with respect to the demonstration project under this subsection) waive compliance with any requirement contained in section 1902(a)(1), 1902(a)(10)(B), 1902(a)(17)(D), 1902(a)(23), 1902(a)(30), or 1903(f) of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with paragraph (2)(B).

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[61] P.L. 100-360, §411(k)(7)(D), redesignated the former subsection (e) as subsection (d).

(4) As a condition of approval of the demonstration project under this subsection, the State shall provide assurances satisfactory to the Secretary that—

(A) the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program; and

(B) the State has in effect a quality assurance mechanism to ensure the quality and accessibility of the services furnished under the Program[62].

(5)(A) The demonstration project under this subsection shall be conducted for a period not to exceed three years.

(B) The Secretary shall conduct an evaluation of the demonstration project under this subsection and shall report the results of such evaluation to the Congress not later than one year after completion of the project.

(c) WAIVERS FOR FAMILY INDEPENDENCE PROGRAM.—Upon approval under section 9121 of this Act[63] of the demonstration project relating to the Family Independence Program in the State of Washington and with respect to such project, the Secretary of Health and Human Services shall waive compliance with any requirements of sections 1902(a)(1), 1902(e)(1), and 1916[64] of the Social Security Act, but only to the extent necessary to enable the State to carry out the project as enacted by the State of Washington in May 1987.

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SEC. 4117. [42 U.S.C. 1396b note] DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID.

The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982).

SEC. 4118. TECHNICAL AND MISCELLANEOUS AMENDMENTS.

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(n) [42 U.S.C. 1396b note] TEMPORARY TECHNICAL ERROR DEFINITION.—For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act, effective for the period beginning on the date of enactment of this Act and ending December 31, 1988, a "technical error" is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.

SEC. 4119. [None assigned.] STUDY OF MEANS OF RECOVERING COSTS OF NURSING FACILITY SERVICES FROM ESTATES OF BENEFICIARIES.[65]

The Secretary of Health and Human Services shall study the means of recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

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SEC. 4201. REQUIREMENTS FOR SKILLED NURSING FACILITIES.

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(c) [42 U.S.C. 1395i-3 note] EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section.

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SEC. 4204. [42 U.S.C. 1395i-3 note] EFFECTIVE DATES.

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[62] P.L. 100-360, §411(k)(9)(A) [as amended by P.L. 100-485, §608(d)(26)(G)], struck out "program" and substituted "Program".

[63] P.L. 100-360, §411(k)(9)(B)(i) [as amended by P.L. 100-485, §608(d)(26)(G)], inserted "under section 9121 of this Act".

[64] P.L. 100-360, §411(k)(9)(B)(ii) [as amended by P.L. 100-485, §608(d)(26)(G)], struck out "1916, and 1924" and substituted "1902(e)(1), and 1916".

[65] P.L. 100-360, §411(k)(11)(A), added §4119.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by sections 4201 and 4202 (relating to skilled nursing facility requirements and survey and certification requirements)[66] shall apply to[67] services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by section 4203 of this Act apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act.[68]

(c)[69] WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

SEC. 4205. [42 U.S.C. 1395i-3 note] ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).

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SEC. 4211. REQUIREMENTS FOR NURSING FACILITIES.

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(b) INCORPORATING REQUIREMENTS INTO STATE PLAN.—

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(2) [42 U.S.C. 1396a note] STATE PLAN AMENDMENT REQUIRED.—A plan of a State under title XIX of the Social Security Act shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).

(c) [42 U.S.C. 1396r note] EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1993, on the implementation of the resident assessment process for residents of nursing facilities under the amendments made by this section.

(d) FUNDING.—

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(2) [42 U.S.C. 1396b note] ENHANCED FUNDING FOR NURSE AIDE TRAINING.—For the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988)[70], with respect to payment under section 1903(a)(2)(B) of the Social Security Act to a State for additional amounts expended by the State under its plan approved under title XIX of such Act for nursing aide training and

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[66] P.L. 100-360, §411(l)(9)(B)(i), struck out "this part" and substituted "sections 4201 and 4202 (relating to skilled nursing facility requirements and survey and certification requirements)".

[67] P.L. 100-360, §411(l)(9)(A), struck out "extended care".

[68] P.L. 100-360, §411(l)(9)(B)(iii), added this subsection (b).

[69] P.L. 100-360, §411(l)(9)(B)(ii) [as amended by P.L. 100-485, §608(d)(27)(K)], redesignated subsection (b) as subsection (c).

[70] P.L. 100-360, §411(l)(3)(F), struck out "calendar quarters during fiscal years 1988 and 1989" and substituted "the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988)".

competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title, any reference to "50 percent" is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act) plus 25 percentage points, but not to exceed 90 percent.

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(j) [42 U.S.C. 1396a note] TECHNICAL ASSISTANCE.—The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.

(k) [42 U.S.C. 1396r note] REPORT ON STAFFING REQUIREMENTS.—The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1993, on the progress made in implementing the nursing facility staffing requirements of subparagraph (C) of section 1919(b)(4) of the Social Security Act (as amended by subsection (a) of this section), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which have received waivers.

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SEC. 4212. SURVEY AND CERTIFICATION PROCESS.

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(c) * * *

(3) [42 U.S.C. 1396b note] For purposes of section 1903(a) of the Social Security Act, proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.

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SEC. 4214. [42 U.S.C. 1396r note] EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by sections 4211 and 4212 (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act, without regard to whether regulations to implement such section are promulgated by such date.

(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by section 4213 of this Act apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such date.

(2)[71] In applying the amendments made by this part for services furnished before October 1, 1990—

(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act[72], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(c)[73] WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

SEC. 4215. [42 U.S.C. 1396r note] ANNUAL REPORT.

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[71] P.L. 100-360, §411(l)(10)(A), struck out "(c) TRANSITIONAL RULE.—" and substituted "(2)".
[72] P.L. 100-360, §411(l)(10)(B), inserted "of section 1919 of the Social Security Act".
[73] P.L. 100-360, §411(l)(10)(C), redesignated subsection (d) as subsection (c).

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act).

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SEC. 4217. [42 U.S.C. 1396r-3 note] FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b)[74] The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

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SEC. 4403. [42 U.S.C. 1395b-1 note] SET ASIDE FOR RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH[75] ISSUES.

(a) SET ASIDES FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND IN INNER-CITY AREAS.—(1)[76] Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990[77] shall be expended for research[78] and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.[79]

(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of research[80] and demonstration projects, relating exclusively or substantially to rural health issues or to inner-city health issues[81], that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such[82] projects in the current and most recently completed fiscal years.

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SEC. 9007. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

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[74] As in original. No heading.

[75] P.L. 100-360, §411(m)(2)(A)(i), struck out "EXPERIMENTS AND DEMONSTRATION PROJECTS RELATING TO RURAL HEALTH CARE" and substituted "RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH".

[76] P.L. 100-360, §411(m)(2)(A)(ii)(I), struck out "ASIDE.—" and substituted "ASIDES FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND INNER-CITY AREAS.—(1)".

[77] P.L. 100-360, §411(m)(2)(A)(ii)(II), struck out "expended in each fiscal year by the Secretary of Health and Human Services (in this section referred to as the "Secretary") after October 1, 1988, with respect to experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by the Social Security Amendments of 1972" and substituted "annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990".

[78] P.L. 100-360, §411(m)(2)(A)(ii)(III), struck out "experiments" and substituted "research".

[79] P.L. 100-360, §411(m)(2)(A)(iii), added paragraph (2).

[80] P.L. 100-360, §411(m)(2)(A)(iv)(I), struck out "experiments" and substituted "research".

[81] P.L. 100-360, §411(m)(2)(A)(iv)(II), inserted "or to inner-city health issues".

[82] P.L. 100-360, §411(m)(2)(A)(iv)(III), struck out "experiments and".

(f) [42 U.S.C. 402 note] EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977.

SEC. 9008. [42 U.S.C. 418 note] MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986))[42], any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

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SEC. 9010. EXTENSION OF DISABILITY RE-ENTITLEMENT PERIOD FROM 15 MONTHS TO 36 MONTHS.

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(f) [42 U.S.C. 402 note] EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1988, and shall apply with respect to—

(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act or subsection (a)(1) of section 223 of such Act for any month after December 1987, and

(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.

SEC. 9021. [None assigned.] MORATORIUM ON REDUCTIONS IN ATTORNEYS' FEES; STUDIES OF ATTORNEYS' FEE PAYMENT SYSTEM.

(a) MORATORIUM.—(1) The provisions of the memorandum of the Associate Commissioner of Social Security dated March 31, 1987 (relating to revised delegations of authority for administrative law judges to determine fees of representatives) which amend sections 1-220 through 1-226 of the Office of Hearings and Appeals Staff Guides and Programs Digest (commonly referred to as the OHA Handbook), and Interim Circular No. 122 (relating to the determination authority regarding fees for representation of claimants), are hereby declared to be null and void. The preceding sentence shall apply with respect to all attorneys' fees finally authorized in connection with claims for benefits under title II of the Social Security Act on and after the date of the

[42]As in original. One closing parenthesis should be stricken.

enactment of this Act, regardless of when the legal services involved were performed; and no reconsideration of any such fee finally authorized prior to that date shall be required.

(2) Until July 1, 1989, neither the Secretary nor the Social Security Administration may modify any of the rules and regulations relating to attorneys' fees in connection with claims for benefits under title II of the Social Security Act.

(b) STUDIES.—(1) The Secretary of Health and Human Services shall conduct a study of the attorneys' fee payment process under title II of the Social Security Act. Such study shall—

(A) assess the levels of reimbursement to attorneys, giving consideration to the contingent nature of most arrangements between claimants and their legal representatives, and propose alternative methods for establishing fees which take the nature of these arrangements into account, and

(B) suggest changes aimed at eliminating unnecessary delays in the approval and payment of attorneys' fees and thereby streamlining the payment process.

In conducting this study, the Secretary shall consult with individuals who represent the views of attorneys and with others who represent the views of claimants.

(2) At the same time, the Comptroller General shall conduct a study of the fee approval system, including at a minimum—

(A) a study of the impact of the current system on claimants and attorneys,

(B) an identification of obstacles to the timely payment of attorneys' fees under present law, and

(C) an assessment of the effect, if any, which the reduced limit on attorneys' fees in effect immediately prior to the enactment of this Act has had on access to legal representation by applicants for disability insurance benefits.

(3) The studies required by paragraphs (1) and (2), along with any recommendations resulting therefrom, shall be submitted to the Congress no later than July 1, 1988.

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SEC. 9111. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) * * *

(2) [42 U.S.C. 1383 note] Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make an election under section 1631(l)(1) of such Act (as added by such amendment).

(b) [42 U.S.C. 1383 note] STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act.

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SEC. 9116. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

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(b) [42 U.S.C. 1383c note] NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) [42 U.S.C. 1383c note] STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

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(e) [42 U.S.C. 1383c note] EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before July 1, 1988.

SEC. 9117. [42 U.S.C. 1383 note] DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such

Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9118. [None assigned.] ASSISTANCE TO HOMELESS AFDC FAMILIES.

The Secretary of Health and Human Services may not take any action, prior to September 30, 1989[84], that would have the effect of implementing in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children, or that would change current policy with respect to any of the matters addressed in such proposed regulation.

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SEC. 9121. [42 U.S.C. 602 note] DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

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[84]P.L. 100-628, §901, struck out "October 1, 1988" and substituted "September 30, 1989". P.L. 100-647, §8101, made the same amendment as P.L. 100-628, §901.

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the Program as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary, under section 403(b) or 1903(d) of the Social Security Act, shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the Program will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 9122. [42 U.S.C. 602 note] CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) IN GENERAL.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) NATURE OF PROGRAM.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) WAIVERS.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) CONDITIONS OF APPROVAL.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) APPLICATION PROCESS.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) EFFECTIVE DATE.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) DURATION OF PROGRAM.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

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SEC. 9134. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANTS.

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(b) [42 U.S.C.1397b note] REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES.—The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) shall—

(A) be used only for the purpose of providing additional services under title XX of the Social Security Act; and

(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.

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SEC. 9138. [None assigned.] STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States who have been diagnosed as having acquired immune deficiency syndrome and who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of the enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

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SEC. 9151. [26 U.S.C. 3304 note] DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202(a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

SEC. 9152. [26 U.S.C. 3304 note] DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed[83].

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[83] As in original. Possibly should be "self-employed".

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than three[86] years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than six[87] years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

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SEC. 9401. [None assigned.] RESTORATION OF TRUST FUNDS FOR 1987.

(a) IN GENERAL.—

(1) OBLIGATIONS ISSUED.—Except as provided in subsection (b), within 30 days after the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall issue to each Federal fund obligations

[86]P.L. 100-647, §8301(1), struck out "two" and substituted "three".
[87]P.L. 100-647, §8301(2), struck out "four" and substituted "six".

under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(A) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(B) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(2) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this section applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to paragraph (1), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(b) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this section applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(c) INTEREST ON STATE AND LOCAL GOVERNMENT SERIES.—On the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

(d) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SECTION APPLIES.—This section shall apply to debt issuance suspension periods beginning on or after July 18, 1987, and ending before Jaunary 1, 1988.

(e) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this section shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(f) DEFINITIONS.—For purposes of this section—

(1) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(2) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

(g) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(1) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in subsections (a), (b), and (c), such period shall be treated as having ended on such date of enactment, and

(2) the amount required to be credited under subsection (c) shall include any income lost because the credit was not made upon the expiration of such period.

SEC. 9402. 6-MONTH EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

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(b) [26 U.S.C. 6402 note] CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

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SEC. 10103. [26 U.S.C. 219 note] CLARIFICATION OF TREATMENT OF FEDERAL JUDGES.

(a) GENERAL RULE.—A Federal judge—

(1) shall be treated as an active participant in a plan established for its employees by the United States[88] for purposes of section 219(g) of the Internal Revenue Code of 1986, and

(2) shall be treated as an employee for purposes of chapter 1 of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.

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[*Internal References.*—Social Security Act §§711(b), 1861(s), and 1886(d) cite the Omnibus Budget Reconciliation Act of 1987. The catchlines to Social Security Act titles II, IV, IX, XI Part B, XVI (SSI), XVIII and Part A and Part B, XIX, and XX; and §§218, 1115, 1154, 1156, 1816, 1819, 1842, 1876, 1881, 1883, 1886, 1901, 1910, 1913, 1915, 1919, 1922, and 1926, and §§201(d); 202(b), (c), (d), (e), (f), and (g); 216(i); 223(a) and (e); 226(b); 464(a); 904(b); 1128B(c) and (d); 1137(a); 1156(b); 1631(l); 1634(d); 1814(b); 1817(c); 1819(g) and (h); 1833(h), (m), and (o); 1834(a) and (b); 1842(b), (h), (i), and (j); 1861(j), (s), and (v); 1862(a); 1864(a) and (d); 1865(a); 1866(a) and (c); 1869(b); 1875(b); 1876(g); 1882(b) and (c); 1886(b) and (d); 1902(a), (e), and (i); 1903(a), (f), (h), (i), (m), (r), and (u); 1905(a), (c), (d), (f), and (i); 1910(a) and (b); 1911(a) and (b); 1913(a) and (b); 1915(a) and (c); 1916(a) and (b); 1917(a); 1919(c), (e), (f), (g), and (h); and 1922(e) have footnotes referring to P.L. 100-203.]

P.L. 100-204, Approved December 22, 1987 (101 Stat. 1331)
Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

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SEC. 721. [22 U.S.C. 287 note] ESTABLISHMENT OF COMMISSION.

The United States Commission on Improving the Effectiveness of the United Nations (hereafter in this part referred to as the "Commission") is hereby established.

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SEC. 724. [22 U.S.C. 287 note] POWERS OF THE COMMISSION.

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(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this part. Upon request of the Chairman of the Commission, the head of any such Federal agency shall furnish such information to the Commission, to the extent authorized by law; except that the head of any Federal agency to which a request for information is provided pursuant to this subsection may deny access to such information, or make access subject to such terms and conditions as the head of that agency may prescribe, on the basis that the information in question is classified and the Commission does not have adequate procedures to safeguard the information in question, or that the Commission does not have a need to know the classified information. In addition, a Federal agency may not provide the Commission with information that could disclose intelligence sources or methods without first securing the approval of the Director of Central Intelligence. The head of any such Federal agency may provide information on a reimbursable basis.

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[88] P.L. 100-647, §2004(c), inserted "in a plan established for its employees by the United States".

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SEC. 725. [22 U.S.C. 287 note] STAFF.

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(b) DETAILING OF GOVERNMENT PERSONNEL.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist it in carrying out this part.

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[*Internal References.*—The catchlines to Social Security Act titles II, IV, XI, XVI (SSI), XVIII, and XIX have footnotes referring to P.L. 100-204.]

P.L. 100-235, Approved January 8, 1988 (101 Stat. 1724)
Computer Security Act of 1987

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SEC. 5. [40 U.S.C. 759 note] FEDERAL COMPUTER SYSTEM SECURITY TRAINING.

(a) IN GENERAL.—Each Federal agency shall provide for the mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use, or operation of each Federal computer system within or under the supervision of that agency. Such training shall be—

(1) provided in accordance with the guidelines developed pursuant to section 20(a)(5) of the National Bureau of Standards Act (as added by section 3 of this Act), and in accordance with the regulations issued under subsection (c) of this section for Federal civilian employees; or

(2) provided by an alternative training program approved by the head of that agency on the basis of a determination that the alternative training program is at least as effective in accomplishing the objectives of such guidelines and regulations.

(b) TRAINING OBJECTIVES.—Training under this section shall be started within 60 days after the issuance of the regulations described in subsection (c). Such training shall be designed—

(1) to enhance employees' awareness of the threats to and vulnerability of computer systems; and

(2) to encourage the use of improved computer security practices.

(c) REGULATIONS.—Within six months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall issue regulations prescribing the procedures and scope of the training to be provided Federal civilian employees under subsection (a) and the manner in which such training is to be carried out.

SEC. 6. [40 U.S.C. 759 note] ADDITIONAL RESPONSIBILITIES FOR COMPUTER SYSTEMS SECURITY AND PRIVACY.

(a) IDENTIFICATION OF SYSTEMS THAT CONTAIN SENSITIVE INFORMATION.—Within 6 months after the date of enactment of this Act, each Federal agency shall identify each Federal computer system, and system under development, which is within or under the supervision of that agency and which contains sensitive information.

(b) SECURITY PLAN.—Within one year after the date of enactment of this Act, each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949, establish a plan for the security and privacy of each Federal computer system identified by that agency pursuant to subsection (a) that is commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information contained in such system. Copies of each such plan shall be transmitted to the National Bureau of Standards and the National Security Agency for advice and comment. A summary of such plan shall be included in the agency's five-year plan required by section 3505 of title 44, United States Code. Such plan shall be subject to disapproval by the Director of the Office of Management and Budget. Such plan shall be revised annually as necessary.

SEC. 7. [40 U.S.C. 759 note] DEFINITIONS.

As used in this Act, the terms "computer system", "Federal computer system", "operator of a Federal computer system", "sensitive information", and "Federal

agency" have the meanings given in section 20(d) of the National Bureau of Standards Act (as added by section 3 of this Act[1]).

SEC. 8. [40 U.S.C. 759 note] RULES OF CONSTRUCTION OF ACT.

Nothing in this Act, or in any amendment made by this Act, shall be construed—

(1) to constitute authority to withhold information sought pursuant to section 552 of title 5, United States Code; or

(2) to authorize any Federal agency to limit, restrict, regulate, or control the collection, maintenance, disclosure, use, transfer, or sale of any information (regardless of the medium in which the information may be maintained) that is—

(A) privately-owned information;

(B) disclosable under section 552 of title 5, United States Code, or other law requiring or authorizing the public disclosure of information; or

(C) public domain information.

[*Internal References.*—The catchlines to Social Security Act titles II, IV, XI, XVI (SSI), XVIII, and XIX have footnotes referring to P.L. 100-235.]

P.L. 100-237, Approved January 8, 1988 (101 Stat. 1733)
Commodity Distribution Reform Act and WIC Amendments of 1987

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SEC. 10. [40 U.S.C. 1786 note] STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM.

(a) STUDY.—The Secretary of Agriculture in consultation with the Secretary of Health and Human Services shall conduct a national study of savings in the amount of assistance provided to families with newborns under State plans for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and State indigent health care programs, during the first 60-day period after birth, as the result of the participation of mothers of newborns before birth in the special supplemental food program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(b) REPORT.—Not later than February 1, 1990, the Secretary shall submit to Congress a report that describes the results of the study conducted under subsection (a).

(c) FUNDING.—This section shall be carried out using funds made available under section 17(g)(3) of the Child Nutrition Act of 1966.

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[*Internal Reference.*—The catchline to Social Security Act title XIX has a footnote referring to P.L. 100-237.]

P.L. 100-300, Approved April 29, 1988 (102 Stat. 437)
International Child Abduction Remedies Act

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SEC. 3. [42 U.S.C. 11602] DEFINITIONS.

For the purposes of this Act—

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

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SEC. 7. [42 U.S.C. 11606] UNITED STATES CENTRAL AUTHORITY.

(a) DESIGNATION.—The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) FUNCTIONS.—The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this Act.

(c) REGULATORY AUTHORITY.—The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this Act.

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[1] See 56th Congress, Ch. 872, §20(d); Vol. II, p. 222.

(d) OBTAINING INFORMATION FROM PARENT LOCATOR SERVICE.—The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

SEC. 8. [42 U.S.C. 11607] COSTS AND FEES.

(a) ADMINISTRATIVE COSTS.—No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

(b) COSTS INCURRED IN CIVIL ACTIONS.—(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).

(2) Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 4 shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.

(3) Any court ordering the return of a child pursuant to an action brought under section 4 shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

SEC. 9. [42 U.S.C. 11608] COLLECTION, MAINTENANCE, AND DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authority—

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this Act.

(b) REQUESTS FOR INFORMATION.—Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) RESPONSIBILITY OF GOVERNMENT ENTITIES.—Whenever any department, agency, or instrumentality of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search discloses the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which—

(1) would adversely affect the national security interests of the United States or the law enforcement interests of the United States or of any State; or

(2) would be prohibited by section 9 of title 13, United States Code;

shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a).

(d) INFORMATION AVAILABLE FROM PARENT LOCATOR SERVICE.—To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) RECORDKEEPING.—The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought to its attention.

SEC. 10. [42 U.S.C. 11609] INTERAGENCY COORDINATING GROUP.

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of title 5, United States Code, for employees of agencies.

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[*Internal Reference.*—Social Security Act §463(e) cites the International Child Abduction Remedies Act.]

P.L. 100-360, Approved July 1, 1988 [102 Stat. 683]
Medicare Catastrophic Coverage Act of 1988

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SEC. 104. EFFECTIVE DATES, TRANSITION, AND CONFORMING AMENDMENTS.

(a) [42 U.S.C. 1395d note] EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b)[1], the amendments made by this subtitle shall take effect on January 1, 1989, and shall apply—

(A) to the inpatient hospital deductible for 1989 and succeeding years,

(B) to care and services furnished on or after January 1, 1989,

(C) to premiums for January 1989 and succeeding months, and

(D) to blood or blood cells furnished on or after January 1, 1989.

(2) ELIMINATION OF POST-HOSPITAL REQUIREMENT FOR EXTENDED CARE SERVICES.—The amendments made by this subtitle, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act) that extended care services are only covered under title XVIII of such Act if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989.

(b) [42 U.S.C. 1395e note] HOLD HARMLESS PROVISIONS.—In the case of an individual for whom a spell of illness (as defined in section 1861(a) of the Social Security Act, as in effect on December 31, 1988) began before January 1, 1989, and had not yet ended as of such date—

(1)(A) section 1813(a)(1) of such Act (as amended by this subtitle)[2] shall not apply to services furnished during that spell of illness during 1989 or 1990, and

(B) if that individual begins a period of hospitalization (as defined in such section) during 1989 or 1990 after the end of that spell of illness, the first period of hospitalization during 1989 or 1990 that begins after that spell of illness shall be considered to be (for purposes of such section) the first period of hospitalization that begins during that year; and[3]

(2) the amount of any deductible under section 1813(a)(2) of such Act (as amended by this subtitle) shall be reduced during that spell of illness during 1989 or 1990 to the extent the deductible under such section was applied during the spell of illness.

(c) [42 U.S.C. 1395ww note] ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act, outlier cutoff points under section 1886(d)(5)(A) of such Act, and weighting factors under section 1886(d)(4) of such Act for

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[1] P.L. 100-485, §608(d)(3)(A), struck out "paragraphs (2) and (3)" and substituted "paragraph (2) and subsection (b)".
[2] P.L. 100-485, §608(d)(3)(B)(i), struck out "(1) the amendment made to section 1813(a)(1) of such Act" and substituted "(1)(A) section 1813(a)(1) of such Act (as amended by this subtitle)".
[3] P.L. 100-485, §608(d)(3)(B)(ii), added subparagraph (B).

discharges occurring on or after October 1, 1988, the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of)[4] medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101).

(2) PPS-EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act for portions of cost reporting periods occurring on or after January 1, 1989[5], the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of)[6] medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act[7].

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SEC. 112. ESTABLISHMENT OF FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

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(b) [42 U.S.C. 1395i-1a note] INTEREST ADJUSTMENT.—In July 1990, the Secretary of the Treasury shall calculate the interest lost to the Federal Hospital Insurance Catastrophic Coverage Reserve Fund due to the lag between the outlays (attributable to the amendments made by this Act) from the Federal Hospital Insurance Trust Fund during 1989 and the transfers made to such Reserve Fund to cover such outlays. Appropriations under section 1817A(a)(2) of the Social Security Act (as inserted by subsection (a)) shall include the amount calculated under the previous sentence.

SEC. 113. [None assigned.] STUDY OF TAX INCENTIVES FOR PURCHASE OF COVERAGE FOR LONG-TERM CARE.

(a) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall conduct a study of Federal tax policies to promote the private financing of long-term care (as defined in subsection (d)). The study shall identify alternative methods of creating incentives, through the tax system, to encourage individuals to purchase insurance coverage for long-term care. The study shall also consider the cost to the United States Treasury and the potential benefits to consumers, including whether the incentives would benefit all or most of the population requiring protection.

(b) CONSULTATION.—The Secretary shall conduct the study required by subsection (a) in consultation with representatives of the insurance industry, providers of long-term care, and consumers.

(c) REPORT.—The Secretary shall report the results of the study required by subsection (a) to the Congress not later than November 30, 1988, together with the Secretary's recommendations for any changes in Federal law that the Secretary determines to be appropriate to promote the private financing of long-term care.

(d) LONG-TERM CARE DEFINED.—For purposes of this section, the term "long-term care" includes care and services provided by nursing homes, home health agencies, and other mechanisms for the delivery of long-term care services.

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SEC. 202. COVERAGE OF CATASTROPHIC EXPENSES FOR PRESCRIPTION DRUGS AND INSULIN.

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(e) USE OF CARRIERS, FISCAL INTERMEDIARIES, AND OTHER ENTITIES IN ADMINISTRATION.—

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(3) SPECIAL CONTRACT PROVISIONS FOR ELECTRONIC CLAIMS SYSTEM.—

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(B) [42 U.S.C. 1395u note] APPLICATION OF DIFFERENT PERFORMANCE STANDARDS.—The Secretary of Health and Human Services, before entering into contracts under section 1842 of the Social Security Act with respect to the

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[4] P.L. 100-485, §608(d)(3)(C), inserted "(or on behalf of)".
[5] P.L. 100-485, §608(d)(3)(D), struck out "cost reporting periods beginning on or after October 1, 1988" and substituted "portions of cost reporting periods occurring on or after January 1, 1989".
[6] See footnote 4.
[7] P.L. 100-485, §608(d)(3)(E), inserted ", without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act".

implementation and operation (and related functions, including claims processing functions[a]) of the electronic system for covered outpatient drugs, shall establish standards with respect to performance with respect to such activities. The provisions of section 1153(e)(2), and paragraphs (1) and (2) of section 1153(h), of such Act shall apply to such activities in the same manner as they apply to contracts with peer review organizations, instead of the requirements of the last 2 sentences of section 1842(b)(2) of such Act.

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(i) [42 U.S.C. 1395m note] REPORTS ON MEDICARE BENEFICIARY DRUG EXPENSES.—
(1) HHS.—The Secretary of Health and Human Services, by not later than April 1, 1989—

(A) using data from the 1987 National Medical Expenditures Survey (conducted by the National Center for Health Services Research and Health Care Technology Assessment), shall report to Congress on expenses incurred by medicare beneficiaries for outpatient prescription drugs, and

(B) shall provide the Director of the Congressional Budget Office with such data from that Survey as the Director may request to make the estimates required under paragraph (2).

(2) REESTIMATION OF COSTS.—The Director of the Congressional Budget Office shall transmit to the Congress, not later than June 1, 1989, or, if later, 60 days after the date of providing data requested under paragraph (1)(B), the Director's estimate of the outlays which will be made (in each of fiscal years 1990, 1991, 1992, and 1993) under the medicare program for covered outpatient drugs (under the amendments made by this section).

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(k) [42 U.S.C. 1395m note] ADDITIONAL STUDIES.—
(1) HHS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct the following studies, and report to Congress on the results of each such study by the following dates:

(A) A study of the possibility of including drugs which have not yet been approved under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act and biological products which have not been licensed under section 351 of the Public Health Service Act but which are commonly used in the treatment of cancer or in immunosuppressive therapy and other experimental drugs and biological products as covered outpatient drugs under the medicare program, for which a report shall be made by January 1, 1990. The study under this subparagraph shall be conducted in consultation with an advisory board of consumers, experts in the fields of cancer chemotherapy and immunosuppressive therapy, representatives of pharmaceutical manufacturers, and such other individuals as the Secretary may select.

(B) A study to evaluate the potential to use mail service pharmacies to reduce costs to the medicare program and to medicare beneficiaries, for which a report shall be made by January 1, 1990.

(C) A study of methods to improve utilization review of covered outpatient drugs, for which a report shall be made by January 1, 1993.

(D) A longitudinal study, to be conducted as a follow-up to the data collected under the survey referred to in subsection (i)(1)(A), on the use of outpatient prescription drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage, for which a report shall be made by January 1, 1993.

(2) GAO.—The Comptroller General shall conduct the following studies, and report to Congress on the results of each such study by not later than May 1, 1991:

(A) A study comparing average wholesale prices with actual pharmacy acquisition costs by type of pharmacy.

(B) A study to determine the overhead costs of retail pharmacies.

(C) A study of the discounts given by pharmacies to other third-party insurers.

Pharmacies which fail to provide the Comptroller General with reasonable access to necessary records to carry out the studies under this paragraph are subject to exclusion from the medicare and medicaid programs under section 1128(a) of the Social Security Act.

(l) [42 U.S.C. 1395m note] DEVELOPMENT OF STANDARD MEDICARE CLAIMS FORM.—

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[a]P.L. 100-485, §608(d)(5)(E), inserted ", including claims processing functions".

(1) The Secretary shall develop, in consultation with representatives of pharmacies and other interested individuals, a standard claims form (and a standard electronic claims format) to be used in requests for payment for covered outpatient drugs under the medicare program and other third-party payors.

(2) Not later than October 1, 1989, the Secretary shall distribute official sample copies of the format developed under paragraph (1) to pharmacies and other interested parties and by not later than October 1, 1990, shall distribute official sample copies of the form developed under paragraph (1) to pharmacies and other interested parties.

(m) [42 U.S.C. 1395u note] EFFECTIVE DATES.—

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(5) TRANSITION.—With respect to administrative expenses (and costs of the Prescription Drug Payment Review Commission) for periods before January 1, 1990, amounts otherwise payable from the Federal Catastrophic Drug Insurance Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund and shall also be treated as a debit to the Medicare Catastrophic Coverage Account.

SEC. 203. COVERAGE OF HOME INTRAVENOUS DRUG THERAPY SERVICES.

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(c) PAYMENT.—

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(2) [42 U.S.C. 1395ww note] PROPAC STUDY.—The Prospective Payment Assessment Commission shall conduct a study, and make recommendations to Congress and the Secretary of Health and Human Services by not later than March 1, 1991, concerning appropriate adjustment to the payment amounts provided under section 1886(d) of the Social Security Act for inpatient hospital services to account for reduced costs to hospitals resulting from the amendments made by this section.

(3) INSPECTOR GENERAL REPORT ON POTENTIALLY ABUSIVE OWNERSHIP OR COMPENSATION ARRANGEMENTS.—The Inspector General of the Department of Health and Human Services shall study and report to Congress, by not later than May 1, 1989, concerning—

(A) physician ownership of, or compensation from, an entity providing items or services to which the physician makes referrals and for which payment may be made under the medicare program;

(B) the range of such arrangements and the means by which they are marketed to physicians;

(C) the potential of such ownership or compensation to influence the decision of a physician regarding referrals and to lead to inappropriate utilization of such items and services; and

(D) the practical difficulties involved in enforcement actions against such ownership and compensation arrangements that violate current antikickback provisions.

Such report shall include such recommendations as may be appropriate to strengthen current law provisions to prevent program abuse. Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this paragraph.*

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SEC. 204. COVERAGE OF SCREENING MAMMOGRAPHY.

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(f) [42 U.S.C. 1395m note] REPORTS.—

(1) The Physician Payment Review Commission shall study and report, by July 1, 1989, to the Committee on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate concerning the cost of providing screening mammography in a variety of settings and at different volume levels.

(2) The Comptroller General shall study and report, by July 1, 1989, to the Committees specified in paragraph (1) concerning the quality of care of screening mammography in a variety of settings.

SEC. 205. IN-HOME CARE FOR CERTAIN CHRONICALLY DEPENDENT INDIVIDUALS.

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*P.L. 100-485, §608(d)(6)(B), added this sentence.

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(g) [42 U.S.C. 1395k note] STUDY OF ALTERNATIVE OUT-OF-HOME SERVICES.—The Secretary of Health and Human Services shall study, and report to Congress, not later than 18 months after the date of the enactment of this Act, on the advisability of providing, to chronically dependent individuals eligible for in-home care under the amendments made by this section, out-of-home services (such as adult day care services or nursing facility services) as alternative services to in-home care.

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SEC. 207. [42 U.S.C. 1395b-1 note] RESEARCH ON LONG-TERM CARE SERVICES FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services, from the funds appropriated under subsection (b), shall provide for research on issues relating to the delivery and financing of long-term care services for medicare beneficiaries. Such research shall include research into at least the following areas:

(1) The financial characteristics of medicare beneficiaries who receive or need long-term care services, including whether such beneficiaries are eligible for medicaid benefits for such services.

(2) How the financial and other characteristics of medicare beneficiaries affect their utilization of institutional and noninstitutional long-term care services.

(3) How relatives of medicare beneficiaries are affected financially and in other ways because the beneficiaries require or receive long-term care services.

(4) The quality of long-term care services (in community-based and custodial settings) and how the provision of long-term care services may reduce expenditures for acute health care services.

(5) The effectiveness of, and need for, State and Federal consumer protections which assure adequate access to and protect the rights of medicare beneficiaries who are provided long-term care services (other than in a nursing facility).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $5,000,000 for each of fiscal years 1989, 1990, 1991, 1992, and 1993 to carry out the research described in subsection (a).

(c) LONG-TERM CARE SERVICES DEFINED.—In this section, the term "long-term care services" includes nursing home care, home care, community-based services, and custodial care.

(d) REPORTS.—The Secretary of Health and Human Services shall submit interim reports by December 1, 1990, and by December 1, 1992, and a final report by June 1, 1994, concerning the demonstration projects conducted under this section.

SEC. 208. [42U.S.C. 1395ll note] STUDY OF ADULT DAY CARE SERVICES.

(a) SURVEY OF CURRENT ADULT DAY CARE SERVICES.—The Secretary of Health and Human Services shall conduct a survey of adult day care services in the United States to collect information concerning—

(1) the scope of such services and the extent of their availability;

(2) the characteristics of entities providing such services;

(3) licensure, certification, and other quality standards that are applied to those providing such services;

(4) the cost and financing of such services; and

(5) the characteristics of the people who use such services.

(b) REPORT.—The Secretary shall report to Congress, by not later than 1 year after the date of the enactment of this Act, on the information collected in the survey. Based on such information, the Secretary shall report, not later than 2 years after the date of the enactment of this Act,[10] recommendations concerning appropriate standards for coverage of adult day care services under medicare, including defining chronically dependent individuals, defining services included in adult day care services, establishing qualifications of providers of adult day care services, and establishing a reimbursement mechanism.

(c) ADULT DAY CARE SERVICES DEFINED.—In this section, the term "adult day care services" means medical or social services provided in an organized nonresidential setting to chronically impaired individuals who are not inpatients in a medical institution.

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SEC. 222. [42U.S.C. 1395mm note] ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS.

The Secretary of Health and Human Services shall—

[10] P.L. 100-485, §608(d)(8), struck out "include in the report" and substituted "report, not later than 2 years after the date of the enactment of this Act,".

(1) modify contracts under section[11] 1876 of the Social Security Act, for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act; and

(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act[12] to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(i)(2)(A) of the Social Security Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967[13], or under section 222(a) of the Social Security Amendments of 1972[14], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.

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SEC. 301. REQUIRING MEDICAID BUY-IN OF PREMIUMS AND COST-SHARING FOR INDIGENT MEDICARE BENEFICIARIES.

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(g) [42 U.S.C. 1396a note] TREATMENT OF CERTAIN STATES.—

(1) STATES OPERATING UNDER DEMONSTRATION PROJECTS.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act, the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(10)(E) of the Social Security Act in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act.

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(h) [42 U.S.C. 1396a note] EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided in subsections (e) and (f) and under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

(A) monthly premiums under title XVIII of such Act for months beginning with January 1989, and

(B) items and services furnished on and after January 1, 1989.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the[15] first session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 302. COVERAGE AND PAYMENT FOR PREGNANT WOMEN AND INFANTS WITH INCOMES BELOW POVERTY LINE.

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(f) [42 U.S.C. 1396a note] EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section apply (except as provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

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[11] P.L. 100-485, §608(d)(13)(A), struck out "sections 1833(a)(1)(A) and" and substituted "section".
[12] P.L. 100-485, §608(d)(13)(B), inserted "and organizations paid under section 1833(a)(1)(A) of such Act".
[13] P.L. 90-248.
[14] P.L. 92-603.
[15] P.L. 100-485, §608(d)(14)(K), inserted "first calendar quarter beginning after the close of the".

(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) shall take effect on the date of the enactment of this Act.

(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a regular legislative session of 2 years, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 303. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

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(f) [None assigned.] TREATMENT OF HOMESTEAD EXEMPTION IN MISSOURI.—The State medical assistance plan of Missouri shall not be in compliance with the requirements of title XIX of the Social Security Act as of October 1, 1989, unless such plan is amended to provide that, in determining the resources of any aged, blind, or disabled individual in the State who applies for medical assistance under such plan on or after such date, the State will not consider the home of the individual as a resource, regardless of the value of the home.

(g) [42 U.S.C. 1396r-5 note] EFFECTIVE DATE.—

(1)(A) The amendments made by this section apply (except as provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after September 30, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) Section 1924 of the Social Security Act (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date.

(2)(A) The amendment made by subsection (b) and section 1902(a)(51)(B) of the Social Security Act, apply (except as provided in paragraph (5)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1988, or the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) Section 1917(c) of the Social Security Act, as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989[16].

(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989[17].

(3) The amendments made by subsection (c) shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(4) The amendment made by subsection (d) is effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3586) is superseded to the extent inconsistent with the amendment made by subsection (d).

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[16]P.L. 100-485, §608(d)(16)(D)(i), inserted ", except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989".

[17]P.L. 100-485, §608(d)(16)(D)(ii), inserted ", and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989".

(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of[18] subsection (e)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(6) The amendments made by paragraphs (1) and (5) of subsection (e) shall apply to medical assistance furnished on or after October 1, 1982.

SEC. 401. [42 U.S.C. 1395b note] ESTABLISHMENT.

There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in the title referred to as the "Commission").

SEC. 402. [42 U.S.C. 1395b note] DUTIES.

(a) IN GENERAL.—The Commission shall—

(1) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

(2) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

(A) comprehensive long-term care services for the elderly and disabled,

(B) comprehensive health care services for the elderly and disabled, and

(C) comprehensive health care services for all individuals in the United States.

(b) CONSIDERATIONS IN RECOMMENDATIONS.—In making its recommendations, the Commission shall consider—

(1) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

(2) the most efficient and effective manner of administering such programs.

(c) DEFINITIONS.—In this title:

(1) The term "comprehensive health care services" includes—

(A) inpatient hospital services (including mental health services);

(B) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

(C) physician services and other outpatient health care services (including mental health services);

(D) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

(E) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

(2) The term "comprehensive long-term care services" includes custodial and noncustodial services in facilities, as well as home community-based services.

SEC. 403. [42 U.S.C. 1395b note] MEMBERSHIP.

(a) APPOINTMENT.—The Commission shall be composed of 15 members appointed as follows:

(1) The President shall appoint 3 members.

(2) The President pro tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate, of whom not more than 4 may be of the same political party.

(3) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

(b) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall elect a chairman and a vice chairman from among its members.

(c) VACANCIES.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

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[18] P.L. 100-485, §608(d)(16)(D)(iii), inserted "paragraphs (1) and (5) of".

(d) QUORUM.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under section 405(a).

(e) MEETINGS.—The Commission shall meet at the call of its chairman or a majority of its members.

(f) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

SEC. 404. [42 U.S.C. 1395b note] STAFF AND CONSULTANTS.

(a) STAFF.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(b) CONSULTANTS.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

SEC. 405. [42 U.S.C. 1395b note] POWERS.

(a) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(b) STUDIES BY GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(c) COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE.—

(1) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(2) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under paragraph (1).

(d) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(e) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(f) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(g) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(h) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(i) ACCEPTANCE OF DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 406. [42 U.S.C. 1395b note] REPORT.

(a) REPORT ON COMPREHENSIVE LONG-TERM CARE SERVICES FOR THE ELDERLY AND DISABLED.—The Commission shall submit to Congress a report, not later than 6 months after the effective date of the first Act providing appropriations for the Commission[19], containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(b) REPORT ON COMPREHENSIVE HEALTH CARE SERVICES.—The Commission shall submit to Congress a report, not later than 1 year after the effective date of the first Act providing appropriations for the Commission[20], containing its findings and

[19] P.L. 100-647, §8414, struck out "date of the enactment of this Act" and substituted "effective date of the first Act providing appropriations for the Commission".

[20] See footnote 19.

recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

SEC. 407. [42 U.S.C. 1395b note] TERMINATION.

The Commission shall terminate 30 days after the date of submission of the report required in section 406(b).

SEC. 408. [42 U.S.C. 1395b note] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,500,000 to carry out this title.

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SEC. 421. [42 U.S.C. 1395b note] MAINTENANCE OF EFFORT.

(a) IN GENERAL.—

(1) DUPLICATIVE PART A BENEFITS.—If an employer described in subsection (b)(1) provides, as of the date of the enactment of this Act, health care benefits to an employee or retired former employee that are duplicative part A benefits (as defined in paragraph (3)(A)), the employer shall, during the period described in subsection (c)(1)(A)[21], provide to the employee or retired former employee an amount of additional benefits or refunds, or combination of such benefits and refunds, that total at least the actuarial value of the duplicative part A benefits (determined as if they were provided in that period)[22].

(2) DUPLICATIVE PART B BENEFITS.—If an employer described in subsection (b)(2) provides, as of the date of the enactment of this Act, health care benefits to an employee or retired former employee that are duplicative part B benefits (as defined in paragraph (3)(B)), the employer shall, during the period described in subsection (c)(1)(B)[23], provide to the employee or retired former employee an amount of additional benefits or refunds, or combination of such benefits and refunds, that total at least the actuarial value of the duplicative part B benefits (determined as if they were provided in that period)[24].

(3) DUPLICATIVE BENEFITS DEFINED.—In this section:

(A) The term "duplicative part A benefits" means benefits provided as of the date of the enactment of this Act[25] which are duplicative of benefits under part A of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1989), but which were not duplicative of such benefits as such part was in effect before the date of the enactment of this Act.

(B) The term "duplicative part B benefits" means benefits provided as of the date of the enactment of this Act[26] which are duplicative of benefits under part B of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1990, but excluding any such benefits with respect to covered outpatient drugs), but which were not duplicative of such benefits as such part was in effect before the date of the enactment of this Act.

(C) Duplicative part A benefits and duplicative part B benefits shall be determined under this section net of any premiums payable by employees (or retired former employees) attributable to the respective duplicative benefits.

(b) EMPLOYERS COVERED.—

(1) DUPLICATIVE PART A BENEFITS.—An employer is described in this paragraph if the employer (including a public employer, other than an employer to which section 422 applies) provides, as of the date of the enactment of this Act, duplicative part A benefits the actuarial value of which is at least 50 percent of the 1989[27] national average actuarial value (discounted to the value as of the date of the enactment of this Act) of the benefits under part A of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1989) which were not covered under part A of title XVIII of the Social Security Act as such part was in effect on the day before the date of the enactment of this Act[28].

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[21] P.L. 100-485, §608(a)(1)(A), inserted "(A)".

[22] P.L. 100-485, §608(a)(1)(B), struck out "during the period described in subsection (c)(1)(A)" and substituted "(determined as if they were provided in that period)".

[23] P.L. 100-485, §608(a)(2)(A), struck out "(c)(2)" and substituted "(c)(1)(B)".

[24] P.L. 100-485, §608(a)(2)(B), struck out "during the period described in subsection (c)(1)(B)" and substituted "(determined as if they were provided in that period)".

[25] P.L. 100-485, §608(a)(3), inserted "provided as of the date of the enactment of this Act".

[26] See footnote 25.

[27] P.L. 100-485, §608(a)(4)(A), inserted "1989".

[28] P.L. 100-485, §608(a)(4)(B), struck out "duplicative part A benefits" and substituted "benefits under part A of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1989) which were not covered under part A of title XVIII of the Social Security Act as such part was in effect on the day before the date of the enactment of this Act".

(2) DUPLICATIVE PART B BENEFITS.—An employer is described in this paragraph if the employer (including a public employer, other than an employer to which section 422 applies) provides, as of the date of the enactment of this Act, duplicative part B benefits the actuarial value of which is at least 50 percent of the 1990[29] national average actuarial value (discounted to the value as of the date of the enactment of this Act) of the benefits under part B of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1990, but excluding any such benefits with respect to covered outpatient drugs) which were not covered under part B of title XVIII of the Social Security Act as such part was in effect on the day before the date of the enactment of this Act.[30].

(3) ELECTION.—For purposes of this section—

(A) IN GENERAL.—An employer may elect to compute the amount of the additional benefits or refunds to be provided under subsections (a)(1) and (a)(2)[31] either—

(i) as being equal to the respective national[32] average actuarial values published by the Secretary under subparagraph (B)(i), or

(ii) on the basis of the actuarial value with respect to that employer, computed using guidelines published by the Secretary under subparagraph (B)(ii).

(B) PUBLICATION OF GUIDELINES AND NATIONAL AVERAGE ACTUARIAL VALUES FOR MINIMUM ADDITIONAL BENEFITS AND REFUNDS[33].—The Secretary of Health and Human Services, before the beginning of each of 4 years (beginning with 1989 for duplicative part A benefits and beginning with 1990 for duplicative part B benefits) shall—

(i) calculate and publish—

(I) the national average actuarial value for the following year of the benefits under part A of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1989) which were not covered under such part as such part was in effect before the date of the enactment of this Act, and

(II) the national average actuarial value for the following year of the benefits under part B of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1990, but excluding any such benefits with respect to covered outpatient drugs) which were not covered under such part as such part was in effect before the date of the enactment of this Act,

to be used by employers who exercise the option under subparagraph (A)(i) in determining the minimum amount of additional benefits or refunds to be provided under subsections (a)(1) and (a)(2), respectively; and

(ii) publish guidelines to be used by employers who exercise the option under subparagraph (A)(ii) in determining the minimum amount of additional benefits or refunds to be provided under subsections (a)(1) and (a)(2), respectively.

The Secretary shall publish, before the beginning of 1989 with respect to part A benefits and before the beginning of 1990 with respect to part B benefits, guidelines[34] to assist employers in determining whether or not employers are described in paragraph (1) or (2) of this subsection.

(c) EFFECTIVE PERIOD.—

(1) IN GENERAL.—

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[29]P.L. 100-485, §608(a)(5)(A), inserted "1990".

[30]P.L. 100-485, §608(a)(5)(B), struck out "duplicative part B benefits" and substituted "benefits under part B of title XVIII of the Social Security Act (as amended by this Act as of January 1, 1990, but excluding any such benefits with respect to covered outpatient drugs) which were not covered under part B of title XVIII of the Social Security Act as such part was in effect on the day before the date of the enactment of this Act.".

As in original. One period should be stricken.

[31]P.L. 100-485, §608(a)(6)(A), struck out "actuarial value of duplicative part A benefits and duplicative part B benefits" and substituted "amount of the additional benefits or refunds to be provided under subsections (a)(1) and (a)(2)".

[32]P.L. 100-485, §608(a)(6)(B), struck out "on the basis of" and substituted "as being equal to the respective national".

[33]P.L. 100-485, §608(a)(6)(C), struck out "COMPUTATION OF ACTUARIAL VALUE" and substituted "PUBLICATION OF GUIDELINES AND NATIONAL AVERAGE ACTUARIAL VALUES FOR MINIMUM ADDITIONAL BENEFITS AND REFUNDS". Executed as if P.L. 100-485, §608(a)(6)(C), struck out ". . . VALUES".

[34]P.L. 100-485, §608(a)(6)(D), struck out clauses (i) and (ii) and "The guidelines published under clause (ii) shall include instructions" and substituted this clause (i) and (ii) and "The Secretary shall publish, before the beginning of 1989 with respect to part A benefits and before the beginning of 1990 with respect to part B benefits, guidelines". Clauses (i) and (ii) formerly read as follows:

"(i) calculate and publish the national average actuarial value of duplicative part A benefits and duplicative part B benefits for 1988 and the year involved, and

"(ii) guidelines for employers to use, under subparagraph (A)(ii), in computing the actuarial value of such duplicative benefits with respect to each employer for such years.".

(A) DUPLICATIVE PART A BENEFITS.—Subsection (a)(1) shall only be effective during the period beginning on January 1, 1989, and ending on December 31, 1989, or, if later, the date specified in paragraph (2).

(B) DUPLICATIVE PART B BENEFITS.—Subsection (a)(2) shall only be effective during the period beginning on January 1, 1990, and ending on December 31, 1990, or, if later, the date specified in paragraph (2).

(2) EXTENSION TO COVER CURRENT COLLECTIVE BARGAINING AGREEMENTS.—In the case of employees or retired former employees who are provided duplicative part A benefits or duplicative part B benefits under a collective bargaining agreement that is in effect on the date of enactment of this Act, the date specified in this paragraph is the date of the expiration of the agreement (determined without regard to any extension thereof agreed to after the date of the enactment of this Act).

(d) EXCLUSION OF MULTI-EMPLOYER PLANS.—This section shall not apply with respect to duplicative benefits provided under a plan—

(1) to which more than one employer is required to contribute, and

(2) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

SEC. 422. [5 U.S.C. 8902 note] RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL ANNUITANTS.

(a) IN GENERAL.—

(1) The Office of Personnel Management shall, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, reduce the rates charged medicare eligible individuals participating in such health benefit plans, by the amount, prorated for each covered medicare eligible individual, of the estimated cost of medical services and supplies which, but for the amendments made by subtitle A of title I and subtitle A of title II of this Act, would have been payable by such plans.

(2) The reduced rates as provided under paragraph (1), shall apply as of the effective dates of the respective amendments.

(b) AUTHORIZATION OF AVAILABILITY OF EMPLOYEE HEALTH BENEFITS FUND FOR RATE REDUCTION.—Funds in the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, are available without fiscal year limitation for costs incurred by the Office of Personnel Management in making rate reductions provided under this section.

(c) DEFINITION.—For purposes of this section the term "medicare eligible individual" means any annuitant, survivor of an annuitant, or former spouse of an annuitant—

(1) who is—

(A) otherwise eligible for benefits under chapter 89 of title 5, United States Code;

(B) eligible for benefits under part A of title XVIII of the Social Security Act; and

(C) covered by the insurance program established under part B of such title; and

(2) for whom benefits paid under title XVIII of the Social Security Act are the primary source of health care benefits.

SEC. 423. [None assigned.] STUDY AND REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT ON OFFERING MEDICARE SUPPLEMENTAL PLANS TO FEDERAL MEDICARE ELIGIBLE INDIVIDUALS, AND OTHER CHANGES.

(a) STUDY AND REPORT.—

(1) No later than April 1, 1989, the Director of the Office of Personnel Management shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives regarding changes to the health benefits program established under chapter 89 of title 5, United States Code, that may be required to incorporate plans designed specifically for medicare eligible individuals and to improve the efficiency and effectiveness of the program.

(2) Any medicare supplemental plan recommended by the Director of the Office of Personnel Management shall not duplicate benefits for which payment may be made under title XVIII of the Social Security Act, however such recommendation—

(A) shall cover expenses which are not payable under such title by reason of deductibles or coinsurance amounts; and

(B) may offer additional reimbursement—

(i) where benefits under such title are limited by fee schedule; and

(ii) for benefits not covered under such title which may be of value to medicare eligible individuals.

(b) FEASIBILITY STUDY AND REPORT.—No later than April 1, 1989, the Director of the Office of Personnel Management shall report to the appropriate committees of the Congress whether it is feasible to adopt such standards as issued by the National Association of Insurance Commissioners as required by section 1882 of the Social Security Act (42 U.S.C. 1395ss) for medicare supplemental policies, when providing a medicare supplemental plans as a type of health benefits plan available for Federal employees pursuant to chapter 89 of title 5, United States Code.

SEC. 424. [42 U.S.C. 1395b-2 note] BENEFITS COUNSELING AND ASSISTANCE DEMONSTRATION PROJECT FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES.

(a) TRAINING AND TECHNICAL ASSISTANCE.—

(1) The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish a demonstration project through an agreement with a private or public nonprofit agency or organization, which demonstrates, to the satisfaction of the Secretary, that its volunteers are adequately trained and competent to render effective benefits counseling and assistance to the elderly, for the purpose of providing training and technical assistance to prepare volunteers to provide to elderly individuals receiving benefits under title XVIII or XIX of the Social Security Act counseling with respect to eligibility for such benefits and assistance in preparing such documentation as may be required to fully receive such benefits.

(2) In addition to any other forms of technical assistance provided under this subsection, the Secretary is authorized to provide to the project—

(A) material to be used in making elderly persons aware of the availability of assistance under volunteer assistance programs under this section; and

(B) technical materials and publications to be used by such volunteers.

(b) POWERS OF THE SECRETARY.—Under the demonstration project under this section, the Secretary is authorized—

(1) to provide for the training of volunteers, and assist in such training, to insure that volunteers are qualified to provide benefits and counseling assistance (as described in paragraph (1)) to the elderly;

(2) to provide reimbursement to volunteers through the agency or organization for transportation, meals, and other expenses incurred by them in training or providing benefits counseling and assistance under this section, and such other support and assistance as the Secretary determines to be appropriate in carrying out the provisions of this section; and

(3) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor.

(c) EMPLOYMENT OF VOLUNTEERS.—

(1) Service as a volunteer in the demonstration project carried out under this section shall not be considered service as an employee of the United States. Volunteers under the project shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

(2) Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986.

(d) DEFINITION.—For purposes of this section, the term "elderly individual" means an individual who has attained the age of 60 years.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in appropriate parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, for fiscal years 1989, 1990, and 1991 such sums as may be necessary to carry out the provisions of this section.

SEC. 425. [42 U.S.C. 1395b-1 note] CASE MANAGEMENT DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Within 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish 4 demonstration projects under which an appropriate entity agrees to provide case management services to medicare beneficiaries with selected catastrophic illnesses, particularly those with high costs of health care services. At least one such demonstration project shall be conducted through an agreement with a utilization and quality control peer review organization with a contract with the Secretary under part B of title XI of the Social Security Act.

(b) PURPOSE OF PROJECTS.—It is the purpose of the demonstration projects established under this section to provide the Secretary and the Congress with the information necessary—

(1) to evaluate the appropriateness of providing case mangagement services under the medicare program for medicare beneficiaries with high costs of medical care, and

(2) to determine the most effective approach to implementing a case management system under the program for such beneficiaries.

(c) AGREEMENT.—The agreement entered into under subsection (a) shall specify—

(1) the high cost cases with respect to which case management services will be provided under the project,

(2) the payments to be made to the entity conducting the project for carrying out the project, and

(3) such other terms and conditions as the Secretary and the entity conducting the project may agree to.

(d) WAIVERS.—The Secretary shall waive—

(1) such provisions of part B of title XI of the Social Security Act, and

(2) such provisions of title XVIII of such Act as relate to limitations or restrictions on benefits under such title,

as the Secretary determines to be appropriate for the conduct of demonstration projects under this section.

(e) DURATION.—

(1) Except as provided in paragraph (2), a demonstration project under this section shall be conducted for a 2-year period.

(2) The Secretary may terminate a demonstration project before the end of the 2-year period specified in paragraph (1) if the Secretary determines that the entity conducting the project is not in substantial compliance with the terms of the agreement entered into under subsection (a).

(f) INFORMATION AND REPORTS.—

(1) An entity with an agreement under subsection (a) shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of that project.

(2)(A) The Secretary shall submit to the Congress an interim report on the projects conducted under this section based upon information that is derived from the first year of project operations and shall set forth any interim findings, recommendations, and conclusions that the Secretary determines to be appropriate.

(B) The Secretary shall submit to the Congress a final report on the demonstration projects conducted under this section based upon data derived from the projects and shall update the findings, recommendations, and conclusions set forth in the interim report submitted under paragraph (1).

(g) AUTHORIZATION TO USE CERTAIN FUNDS.—The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund in such proportions as the Secretary determines to be appropriate, of not to exceed $2,000,000 in each of 2 fiscal years for administrative costs in carrying out the demonstration projects under this section. Such amounts shall be transferred without regard to amounts appropriated in advance in appropriation Acts.

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SEC. 427. [42 U.S.C. 1395h note] ADVISORY COMMITTEE ON MEDICARE HOME HEALTH CLAIMS.

(a) ESTABLISHMENT.—The Administrator of the Health Care Financing Administration (in this section referred to as the "Administrator") shall, within 90 days after the date of the enactment of this Act, establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims (in this section referred to as the "Advisory Committee").

(b) MEMBERSHIP.—The Advisory Committee shall be composed of 11 members appointed by the Administrator for the life of the Committee. Of the members appointed—

(1) at least 5 shall be representatives of home health or visiting nurse agencies, and

(2) the remaining members shall be representative of fiscal intermediaries, physician groups, and senior citizen groups, but no more than 3 of such members may be representative of fiscal intermediaries.

Members shall be appointed so as to be representative of all geographic areas of the United States.

(c) DUTIES.—The Advisory Committee shall study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials.

(d) REPORT.—The Advisory Committee shall report to the Administrator, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, not later than one year after the date of the enactment of this Act, on its study under subsection (c), the findings of its study, and its recommendations for changes in the regulations under title XVIII of the Social Security Act as they relate to denial of claims for home health services.

(e) MISCELLANEOUS PROVISIONS.—

(1) The Advisory Committee shall elect one of its members to serve as Chairman.

(2)(A) A majority of the members of the Advisory Committee shall constitute a quorum for the transaction of business.

(B) The Advisory Committee shall meet at the call of the Chairman, or at the call of a majority of its members.

(3) Members of the Advisory Committee shall serve without compensation, but shall be entitled to reimbusement[35] for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Committee.

(4) The Advisory Committee may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(5) In carrying out its duties, the Advisory Committee is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which is[36] has a responsibility under this section, as the Committee may deem advisable.

(6) The Advisory Committee may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities. Upon request of the Committee, any such department or agency shall furnish any such data or information.

(7) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Advisory Committee may request.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

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SEC. 429. [42 U.S.C. 1395b-1 note] DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for at least[37] 5 demonstration projects, for at least[38] 3 years each, to review the appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units. Such projects shall be conducted in consultation with the Prospective Payment Assessment Commission.

(b) WAIVER AUTHORITY.—In conducting demonstration projects under this section for units, the Secretary may treat such a unit as a rehabilitation unit described in section 1886(d)(1)(B) of the Social Security Act for purposes of such section.

[*Internal References.*—Social Security Act §§1817A(a), 1839(a), 1841B(b), and 1882(k) and (l) cite the Medicare Catastrophic Coverage Act of 1988. The catchlines to Social Security Act titles XI Part B, XVIII and Part A, and XIX and §§1115, 1817A, 1842, 1847, 1876, and 1886; and §§1812(a), (b), (c), (d), and (e); 1813(a) and (b); 1814(a) and (d); 1817A(a); 1818(d); 1832(b); 1833(a); 1842(h); 1861(a), (e), (i), (v), (y), (kk), and (ll); 1866(d); 1883(d) and (f); 1886(b) and (d); 1902(a), (c), (e), and (l); 1903(f) and (i); 1905(p); and 1917(c) have footnotes referring to P.L. 100-360.]

P.L. 100-383, Approved August 10, 1988 (102 Stat. 903)
[Commission on Wartime Relocation and Internment of Civilians]

An Act

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[35] As in original. Should be "reimbursement".
[36] As in original. Should be "it".
[37] P.L. 100-647, §8404(a), struck out "up to" and substituted "at least".
[38] See footnote 37.

To implement recommendations of the Commission on Wartime Relocation and Internment of Civilians.

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SEC. 105. [50 U.S.C. app. 1989b-4] RESTITUTION.

(a) LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subject to paragraph (6), the Attorney General shall, subject to the availability of funds appropriated to the Fund for such purpose, pay out of the Fund to each eligible individual the sum of $20,000, unless such individual refuses, in the manner described in paragraph (4), to accept the payment.

* * * * * * *

(f) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

* * * * * * *

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

* * * * * * *

SEC. 206. [50 U.S.C. app. 1989c-5] INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS.

(a) PAYMENTS TO ELIGIBLE ALEUTS.—In addition to payments made under section 205, the Secretary shall, in accordance with this section, make per capita payments out of the Fund to eligible Aleuts. The Secretary shall pay, subject to the availability of funds appropriated to the Fund for such payments, to each eligible Aleut the sum of $12,000.

* * * * * * *

(d) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible Aleut under this section—

* * * * * * *

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles II, XVIII, and XX, and §§1612(b) and 1613(a); and §§402(a) and 1902(a) have footnotes referring to P.L. 100-383.]

P.L. 100-407, Approved August 19, 1988 (102 Stat. 1044)
Technology-Related Assistance for Individuals With Disabilities Act of 1988

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SEC. 2. [29 U.S.C. 2201] FINDINGS AND PURPOSES.

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(b) PURPOSES.—The purposes of this Act are as follows:

(1) To provide financial assistance to the States to help each State to develop and implement a consumer-responsive statewide program of technology-related assistance for individuals of all ages with disabilities that is designed to—

(A) increase awareness of the needs of individuals with disabilities for assistive technology devices and assistive technology services;

(B) increase awareness of policies, practices, and procedures that facilitate or impede the availability or provision of assistive technology devices and assistive technology services;

(C) increase the availability of and funding for the provision of assistive technology devices and assistive technology services for individuals with disabilities;

(D) increase awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among individuals with disabilities,

the families or representatives of individuals with disabilities, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals;

(E) increase the capacity of public and private entities to provide technology-related assistance, particularly assistive technology devices and assistive technology services, and to pay for the provision of assistive technology devices and assistive technology services;

(F) increase coordination among State agencies and public and private entities that provide technology-related assistance, particularly assistive technology devices and assistive technology services; and

(G) increase the probability that individuals of all ages with disabilities will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as such individuals make the transition between services offered by human service agencies or between settings of daily living.

(2) To facilitate—

(A) the identification of Federal policies that facilitate payment for assistive technology devices and assistive technology services for individuals with disabilities;

(B) the identification of Federal policies that impede such payment; and

(C) the elimination of inappropriate barriers to such payment.

(3) To enhance the ability of the Federal Government to provide the States with—

(A) technical assistance, information, and training and public awareness programs relating to the provision of assistive technology devices and assistive technology services; and

(B) funding for model demonstration and innovation projects.

TITLE I—GRANTS TO STATES

SEC. 101. [29 U.S.C. 2211] PROGRAM AUTHORIZED.

(a) GRANTS TO STATES.—The Secretary of Education shall make grants to States in accordance with the provisions of this title to assist States to develop and implement consumer-responsive comprehensive statewide programs of technology-related assistance that accomplish the purposes described in section 2(b)(1).

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SEC. 105. [29 U.S.C. 2215] ADMINISTRATIVE PROVISIONS.

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(c) EFFECT ON OTHER ASSISTANCE.—Nothing in this title shall be construed to permit the State or any Federal agency to reduce medical or other assistance available or to alter eligibility under—

(1) title II, V, XVI, XVIII, XIX, or XX of the Social Security Act;

(2) the Education of the Handicapped Act;

(3) the Rehabilitation Act of 1973; or

(4) laws relating to veterans' benefits.

TITLE II—PROGRAMS OF NATIONAL SIGNIFICANCE

* * * * * * *

SEC. 201. [29 U.S.C. 2231] STUDY BY NATIONAL COUNCIL ON THE HANDICAPPED.

(a) STUDY AND RECOMMENDATIONS.—The National Council on the Handicapped (hereafter in this part referred to as the "Council"), in addition to the duties of the Council described in section 401 of the Rehabilitation Act of 1973, shall conduct a study and make recommendations to the Congress and the President concerning—

(1) Federal laws, regulations, procedures, and practices that facilitate or impede the ability of the States to develop and implement consumer-responsive statewide programs of technology-related assistance for individuals with disabilities;

(2) Federal and State laws, regulations, procedures, and practices that facilitate or impede the acquisition of, financing of, or payment for assistive technology devices and assistive technology services for individuals with disabilities;

(3) policies, practices, and procedures of private entities (including insurers) that facilitate or impede the acquisition of, financing of, or payment for assistive technology devices and assistive technology services for individuals with disabilities; and

(4) alternative strategies for acquiring or paying for assistive technology devices and assistive technology services.

* * * * * * *

(c) COOPERATION OF OTHER AGENCIES.—

(1) FEDERAL AGENCIES.—The heads of all Federal agencies shall, to the extent not prohibited by law, cooperate with the Council in carrying out the duties of the Council under this part.

(2) USE OF RESOURCES OF FEDERAL, STATE, AND LOCAL AGENCIES.—The Council may use in carrying out its duties under this part, with the consent of the agency involved, services, personnel, information, and facilities of other Federal, State, local, and private agencies, with or without reimbursement.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles IV Part B and XVIII and §428 and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), 1613(a), and 1902(a) have footnotes referring to P.L. 100-407.]

P.L. 100-409, Approved August 20, 1988 (102 Stat. 1086)
Federal Land Exchange Facilitation Act of 1988

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SEC. 2. [43 U.S.C. 1716 note] FINDINGS AND PURPOSES.

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(b) PURPOSES.—The purposes of this Act are:

(1) to facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the Departments of the Interior and Agriculture by—

(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards; and

(B) establishing procedures and guidelines for the resolution of appraisal disputes.

* * * * * * *

SEC. 5. [43 U.S.C. 1716 note] SAVING CLAUSE.

Nothing in this Act shall be construed as amending the Alaska Native Claims Settlement Act (Public Law 92-203, as amended) or the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of Agriculture by either such Acts.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles IV Part B and XVIII, and §428, and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), 1613(a), and 1902(a) have footnotes referring to P.L. 100-409.]

P.L. 100-411, Approved August 22, 1988 (102 Stat. 1097)
[Land Claims of Coushatta Tribe of Louisiana]

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SECTION 1. SETTLEMENT PAYMENT.

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(b) The payment of such sum shall be in full settlement of, and shall finally dispose of, all rights, claims or demands which the Tribe has asserted, or could have asserted, against the United States under the provisions of the Act of August 13, 1946 (60 Stat. 1049).

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SEC. 2. USE AND DISTRIBUTION OF FUNDS.

(a) All available funds invested by the Secretary pursuant to section 1 plus all accrued interest or income, less the amount reserved for tribal organization pursuant to section 4, shall be distributed as provided in this section.

* * * * * * *

(d)(1) In the event that the plan provides for the per capita distribution of any portion of the funds to the members of the Tribe, such per capita payments shall be made as provided in this subsection.

* * * * * * *

(3)(A) Upon final approval of the roll by the Secretary, the funds provided for per capita payments under the plan adopted pursuant to this section shall be paid in equal shares to persons on such roll.

(B) Payments made pursuant to this paragraph shall be subject to the provisions of section 7 of the Act of October 19, 1973 (25 U.S.C. 1407).

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[*Internal References.*—The catchlines to Social Security Act titles IV Part B, and XVIII and §428, and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), 1612(b), 1613(a), and 1902(a) have footnotes referring to P.L. 100-411.]

P.L. 100-436, Approved September 20, 1988 (102 Stat. 1680)
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989

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Title II—Department of Health and Human Services

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Social Security Administration

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LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, not more than $3,795,661,000, may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, [42 U.S.C. 1383 note] That travel expense payments under section 1631(h) of such Act for travel to hearings may be made only when travel of more than seventy-five miles is required:

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Provided further, That none of the funds appropriated by this Act may be used for the manufacture, printing, or procuring of social security cards, as provided in section 205(c)(2)(D) of the Social Security Act, where paper and other materials used in the manufacture of such cards are produced, manufactured, or assembled outside of the United States:

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[*Internal References.*— Social Security Act §205(c) and the catchline to §1631(h) have footnotes referring to P.L. 100-436.]

P.L. 100-440, Approved September 22, 1988 (102 Stat. 1721)
Treasury, Postal Service and General Government Appropriations Act, 1989

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SEC. 631. [None assigned.] For purposes of section 1886 of the Social Security Act, Missouri Baptist Hospital of Sullivan in Sullivan, Missouri is deemed to be located in Franklin County, Missouri, retroactively effective for discharges beginning on or after December 22, 1987.

[*Internal Reference.*—The catchline to Social Security Act §1886 has a footnote referring to P.L. 100-440.]

P.L. 100-456, Approved Sept. 29, 1988 (102 Stat. 1918)
"National Defense Authorization Act, Fiscal Year 1989"

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SEC. 523. [32 U.S.C. 709 note] MILITARY EDUCATION FOR ARMY NATIONAL GUARD CIVILIAN TECHNICIANS

(a) PHASE-OUT OF PROGRAM REQUIRING OUT-OF-STATE TRAINING.—A civilian technician of the Army National Guard whose military occupational specialty has been approved by the Secretary of the Army in accordance with subsection (b) for training under the Reserve Component Noncommissioned Officers Education Program by an appropriate National Guard school (as defined in subsection (f)) shall, if such technician is not already qualified in that military occupational specialty, receive military training in that military occupational specialty through that school rather than through the Military Education Program.

(b) APPROVAL OF STATE COURSES.—(1) Each National Guard school which receives from the Department of the Army a training program for National Guard training for a military occupational specialty as part of the Reserve Component Noncommissioned Officers Education Program shall implement that training program by the end of the 45-day period beginning on the receipt of such program by the school or as soon thereafter as feasible. The Secretary of the Army shall, not later than 45 days after any such school notifies the Secretary that it has implemented such a training program, determine whether or not such school has properly implemented such program. Upon the approval by the Secretary of the implementation of such program by such school, subsection (a) shall apply with respect to military education of civilian technicians of the Army National Guard of that State in the applicable military occupational specialty.

(2) In the case of a National Guard school for which a program has not been approved under paragraph (1) with respect to a military occupational specialty, the Secretary of the Army may, subject to subsection (d), require a civilian technician of the Army National Guard in that State with that military occupational specialty to receive training through the Military Education Program.

(c) SPECIAL RULE FOR LEADERSHIP TRAINING.—A civilian technician of the Army National Guard who is required by the National Guard Bureau to receive leadership training through courses known as Primary Leadership Development courses shall receive such training through the appropriate State National Guard school.

(d) TRANSITION.—In the case of a civilian technician of the Army National Guard for whose military occupational specialty there is not, as of the date of the enactment of this Act, a program of training approved under subsection (b) for an appropriate National Guard school, the technician shall, at his request, be given the Skill Qualification Test appropriate for his military occupational specialty and skill level. If the technician passes the test and, if necessary for his military occupational specialty, successfully completes the Army National Guard Battle Skills Course for the appropriate grade, the Secretary of the Army may not require the technician to receive training through the existing Military Education Program and may not reduce the technician in military grade, or deny the technician a military promotion, by reason of failure to receive training through the Military Education Program.

(e) REPORT.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation of the Reserve Component Noncommissioned Officers Education Program. The report shall discuss the implementation of such program at each State National Guard school and shall explain, in any case in which the implementation of a training program has not been approved under subsection (b), the reasons for the withholding of such approval. Such report shall be submitted not later than December 31, 1988.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "National Guard school", with respect to a civilian technician, means a National Guard school of that technician's State, or (2) a regional National Guard school designated by the Secretary of the Army for the region including that technician's State.

(2) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

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SEC. 601. [37 U.S.C. 1009 note] MILITARY PAY RAISE FOR FISCAL YEAR 1989

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1989 shall not be made.

(b) INCREASE IN BASIC PAY AND BAS.—The rates of basic pay and basic allowance for subsistence of members of the uniformed services are increased by 4.1 percent effective on January 1, 1989.

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SEC. 703. GENERAL COUNSELS OF MILITARY DEPARTMENTS

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(b) [5 U.S.C. 5316 note] PAY GRADE.—Notwithstanding section 5316 of title 5, United States Code, the General Counsel of each of the military departments shall be paid at the highest rate of basic pay payable under section 5382 of title 5, United States Code, to a member of the Senior Executive Service.

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[*Internal References.*—Social Security Act §§209, 210(a), and 218(b) have footnotes referring to P.L. 100-456.]

P.L. 100-485, Approved October 13, 1988 (102 Stat. 2343)
Family Support Act of 1988

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SEC. 101. IMMEDIATE INCOME WITHHOLDING.

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(c) [42 U.S.C. 666 note] STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

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SEC. 103. STATE GUIDELINES FOR CHILD SUPPORT AWARD AMOUNTS.

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(d) [42 U.S.C. 666 note] STUDY OF IMPACT OF EXTENDING PERIODIC REVIEW REQUIREMENT TO ALL OTHER CASES.—Within 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct and complete a study to determine the impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

(e) [42 U.S.C. 666 note] DEMONSTRATION PROJECTS FOR EVALUATING MODEL PROCEDURES FOR REVIEWING CHILD SUPPORT AWARDS.—(1) Not later than April 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall enter into an agreement with each of 4 States submitting applications under this subsection for the purpose of conducting a demonstration project under part D of title IV of the Social Security Act in the State to test and evaluate model procedures for reviewing child support award amounts.

(2) Notwithstanding section 454(1) of the Social Security Act, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated by the Governor of the State involved. Under such agreement, the Secretary shall pay to the State, as an additional payment under part D of title IV of the Social Security Act, an amount equal to 90 percent of the reasonable costs incurred by the State in conducting a demonstration project under this subsection. Such costs shall not be taken into account for purposes of computing the incentive payment under section 458 of such Act.

(4) A demonstration project under this subsection shall be commenced not later than September 30, 1989, and shall be conducted for a 2-year period unless the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the State under paragraph (1).

(5)(A) Any State with an agreement under this subsection shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to Congress not later than 6 months after all such projects are completed.

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SEC. 111. PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS.

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(f) * * *

(3) [42 U.S.C. 652 note] The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(g) of the Social Security Act (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary determines that data for the full year are not available.

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SEC. 121. REQUIREMENT OF PROMPT STATE RESPONSE TO REQUESTS FOR CHILD SUPPORT ASSISTANCE.

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(b) [42 U.S.C. 652 note] ADVISORY COMMITTEE; REGULATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment.

SEC. 122. REQUIREMENT OF PROMPT STATE DISTRIBUTION OF AMOUNTS COLLECTED AS CHILD SUPPORT.

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(b) [42 U.S.C. 652 note] REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment.

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SEC. 126. [42 U.S.C. 666 note] COMMISSION ON INTERSTATE CHILD SUPPORT.

(a) ESTABLISHMENT OF COMMISSION.—There is hereby established a Commission to be known as the Commission on Interstate Child Support (in this section referred to as the "Commission") to be composed of 15 members appointed in accordance with subsection (b)(1).

(b) APPOINTMENT AND TERM OF MEMBERS; VACANCIES; TRANSACTION OF BUSINESS.—(1) Members of the Commission shall be appointed as follows from among individuals knowledgeable in matters involving interstate child support:

(A) Four members shall be appointed jointly by the Majority and Minority Leaders of the Senate, in consultation with the chairman and ranking minority member of the Committee on Finance of the Senate.

(B) Four members shall be appointed jointly by the Speaker of the House and the Minority Leader of the House, in consultation with the chairman and ranking minority member of the Committee on Ways and Means of the House of Representatives.

(C) Seven members shall be appointed by the Secretary of Health and Human Services (in this section referred to as the "Secretary").

(2) Members of the Commission shall serve for the life of the Commission. A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(4) The members of the Commission shall be appointed by July 1, 1989. The first meeting of the Commission shall be called by the Secretary as promptly as possible after all such members are appointed. At such meeting, the members of the Commission shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members.

(c) BASIC PAY.—(1) Members of the Commission shall serve as such without pay.

(2) Members of the Commission shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the government service are allowed travel expenses under section 5703 of title 5 of the United States Code.

(d) DUTIES OF THE COMMISSION.—(1) During the fiscal year 1990, the Commission shall hold one or more national conferences on interstate child support reform for the purpose of assisting the Commission in preparing the report required under paragraph (2).

(2) Not later than May 1, 1991, the Commission shall submit a report to the Congress that contains recommendations for—

(A) improving the interstate establishment and enforcement of child support awards, and

(B) revising the Uniform Reciprocal Enforcement of Support Act.

(e) POWERS OF THE COMMISSION.—(1) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

(2) The Commission may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

(3) The Commission may procure supplies, services, and property, and make contracts (but only to the extent or in such amounts as are provided in appropriation Acts).

(4) For purposes of carrying out its duties under subsection (d), the Commission may adopt such rules for its organization and procedures as it deems appropriate.

(f) TERMINATION OF THE COMMISSION.—(1) The Commission shall terminate on July 1, 1991.

(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on such date shall be disposed of as excess or surplus property.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated $2,000,000.

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SEC. 128. [42 U.S.C. 667 note] STUDY OF CHILD-REARING COSTS.

The Secretary of Health and Human Services shall, by grant or contract, conduct a study of the patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which the parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together. The Secretary shall submit to the Congress no later than 2 years after the date of the enactment of this Act a full and complete report of the results of such study, including such recommendations as the Secretary may have for legislative, administrative, and other actions. There are authorized to be appropriated such sums as may be necessary to carry out this section.

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SEC. 203. REGULATIONS; PERFORMANCE STANDARDS; STUDIES.

(a) [42 U.S.C. 681 note] REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall issue proposed regulations for the purpose

of implementing the amendments made by this title, including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of Labor and with the responsible State agencies described in section 482(a)(2) of the Social Security Act.

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(c) [42 U.S.C. 681 note] IMPLEMENTATION AND EFFECTIVENESS STUDIES.—(1)(A) The Secretary shall conduct an implementation study in accordance with subparagraph (B).

(B) The implementation study conducted under subparagraph (A) shall be based on a representative sample of States and localities and shall document with respect to the programs established pursuant to part F of title IV[1] the Social Security Act—

(i) the types, mix, and costs of services offered,

(ii) participation rates or activity levels,

(iii) the characteristics of the individuals in the different type of activities,

(iv) the provisions made for child and day care and the extent to which limitations exist with respect to the availability of such care,

(v) the institutional arrangements and operating procedures under which activities are offered in the different locations, and

(vi) such other factors as the Secretary deems appropriate.

(C) There is authorized to be appropriated $500,000 for each of the fiscal years 1989, 1990, and 1991 for the purpose of conducting the implementation study under this paragraph.

(2)(A) The Secretary shall conduct a study in accordance with this paragraph to determine the relative effectiveness of the different approaches for assisting long-term and potentially long-term recipients developed by States pursuant to the programs established under part F of title IV of the Social Security Act.

(B)(i) The study required under subparagraph (A) shall be based on data gathered from demonstration projects conducted in 5 States chosen by the Secretary from among applications submitted by interested States. Such projects shall be conducted for a period of not less than 3 years upon such terms and conditions (including those involving payments to the participating States) as the Secretary may provide.

(ii) A demonstration project conducted under this subparagraph shall use specific outcome measures to test the effectiveness of particular programs. Such measures shall include educational status, employment status, earnings, receipt of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act, receipt of other transfer payments, and, to the extent possible, the poverty status of participating families.

(iii) A demonstration project conducted under this subparagraph shall use experimental and control groups that are composed of a random sample of participants in the program established under part F of title IV of the Social Security Act. The Secretary shall assure that the experimental design is comparable among localities.

(C) Participating States shall provide to the Secretary in such form and with such frequency as he requires interim data from the demonstration projects conducted under this paragraph. The Secretary shall report to the Congress annually on the progress of such projects and shall, not later than one year after the date of final data collection, submit to the Congress the study required under subparagraph (A).

(D) There is authorized to be appropriated $5,000,000 for each of the fiscal years 1990 and 1991 for the purpose of making payments to States conducting demonstration projects under this section.

(3) The Secretary shall establish such uniform reporting requirements as the Secretary determines are appropriate for the purpose of conducting the demonstration projects required under this section.

(4) Within 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall convene an advisory panel which may include representatives from the Office of Management and Budget, the Congressional Budget Office, the Congressional Research Service, and the General Accounting Office, and such other individuals and organizations as the Secretary may determine. The panel shall meet periodically to design, implement, and monitor a series of implementation and evaluation studies to assess the methods and effects of the programs initiated under this Act. Insofar as possible, the panel shall work in a collegial fashion; but if consensus cannot be reached among panel members on particular decisions the Secretary of Health and Human Services is authorized to make all final decisions about program design, use of contractors, conduct of particular studies, and any other matters which may come before the panel.

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[1] As in original.

(d) [42 U.S.C. 681 note] STUDY ON APPLICATION OF JOBS PROGRAMS TO INDIANS.—The Secretary of Health and Human Services, in cooperation with the Secretary of the Interior, shall conduct a study of—

(1) the effectiveness of such employment, training, and education programs for low-income individuals as are specifically directed toward Indians in responding to the needs of Indians on reservations;

(2) the effectiveness of such programs as are not specifically directed toward Indians in responding to such needs;

(3) the extent to which such needs are not met by such programs;

(4) how such programs could be better coordinated in responding to such needs;

(5) how such programs could be improved or restructured to more effectively meet such needs;

(6) what sustainable job markets exist in Indian communities (assessed by tribe and region); and

(7) the availability of such support services (as transportation and child care) as are necessary to assist Indians on reservations in participating in such programs and obtaining permanent employment.

The Secretary of Health and Human Services and the Secretary of the Interior shall report to the Congress on the results of the study under this subsection not later than October 1, 1989 (or, if later, one year after the date of the enactment of this Act).

SEC. 204. [42 U.S.C. 681 note] EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall become effective on October 1, 1990.

(b) SPECIAL RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 203(a) (or, if earlier, the date on which such regulations are required to be published under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(k)(2) of the Social Security Act (as added by section 201(c)(1) of this Act) shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

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SEC. 302. EXTENDED ELIGIBILITY FOR CHILD CARE.

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(d) [42 U.S.C. 602 note] STUDY OF WELFARE REQUALIFICATION; REGULATIONS BASED ON RESULTS OF STUDY.—The Secretary of Health and Human Services shall conduct a study to determine whether individuals who ceased receiving aid under the State program of aid to families with dependent children approved under this part have begun again to receive such aid in order to requalify for additional months of transition benefits, and if the study reveals that such is the case, the Secretary shall, not earlier than October 1, 1991, issue regulations which restrict such requalification.

(e) [42 U.S.C. 602 note] STUDY ON EFFECTS OF EXTENDING ELIGIBILITY FOR CHILD CARE.—The Secretary of Health and Human Services shall conduct a study on the effectiveness of the amendments made by this section in reducing welfare dependence and assisting families in making the transition from welfare to employment, and such other effects of such amendments as the Secretary may find appropriate, and shall report the results of such study not later than September 30, 1997.

SEC. 303. EXTENDED ELIGIBILITY FOR MEDICAL ASSISTANCE.

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(c) [42 U.S.C. 1396r-6 note] STUDY AND REPORT.—(1) The Secretary of Health and Human Services shall conduct a study of the impact of the medicaid extension provisions under section 1925 of the Social Security Act, with particular focus on the costs of such provisions and the impact on welfare dependency, and shall report to Congress on the results of such study not later than April 1, 1993.

(2) The study under paragraph (1) shall include an examination of—

(A) the extent to which the availability of extended medicaid benefits affects access to and use of medical services,

(B) the relative effectiveness of different types of coverage provided by States,

(C) the effect of requiring families to pay premiums or incur any other expenses with respect to such extended benefits, and

(D) whether individuals who have exhausted such benefits recycle onto welfare for short periods of time in order to requalify for such extended benefits.

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SEC. 401. BENEFITS FOR TWO-PARENT FAMILIES.

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(e) [42 U.S.C. 607 note] EVALUATION AND REPORT.—(1) The Secretary of Health and Human Services shall evaluate the time-limited and conventional State programs conducted under section 407 of the Social Security Act (as amended by this section), including the effects of the work requirement applicable to families receiving benefits under such section.

(2) The Secretary shall, not later than July 1, 1996, submit to the Congress an interim report containing the findings of such evaluation together with recommendations for any changes in such program, and shall, not later than July 1, 1998, submit to the Congress a final report containing such findings and recommendations.

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SEC. 405. [None assigned.] CBO STUDY ON IMPLEMENTATION OF NATIONAL MINIMUM PAYMENT STANDARD.

(a) IN GENERAL.—The Congressional Budget Office shall conduct a study on the implementation of the amendments proposed by section 101 of the bill introduced in the Senate of the United States during the 100th Congress and designated S. 862 (relating to the requirement of a minimum payment standard under part A of title IV of the Social Security Act with a Federal matching rate of 90 percent).

(b) DESCRIPTION OF STUDY.—The study conducted under subsection (a) shall assess the extent to which—

(1) the goal of budget neutrality may be preserved by repealing the programs included in, but not limited to, the programs described in the amendments proposed by section 301 of the bill described in subsection (a) over a more gradual period of time in conjunction with corresponding increases (up to 90 percent) in the Federal matching rates under part A of title IV, and title XIX, of the Social Security Act; and

(2) the effects on local governments of repealing Federal programs could be mitigated by providing, over a period of time that corresponds with more gradual increases in the Federal matching rates under such part A and title XIX, general revenue supplements to those localities with the lowest levels of fiscal capacity and pass-throughs to units of local government.

(c) REPORT TO CONGRESS.—The Congressional Budget Office shall report on the results of the study conducted under this section not later than 12 months after the date of the enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 406. [42 U.S.C. 602 note] STUDY OF NEW NATIONAL APPROACHES TO WELFARE BENEFITS FOR LOW-INCOME FAMILIES WITH CHILDREN.

(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract or arrangement with the National Academy of Sciences for the study of a new national system of welfare benefits for low-income families with children, giving particular attention to what an appropriate national minimum benefit might be and how it should be calculated. The study shall give consideration to alternative minimum benefit proposals including proposals for benefits based on a family living standard, on weighted national median income, on State median income, and on the poverty level, and shall take into account the probable impact of a national minimum benefit on individuals and on State and local governments.

(b) METHODOLOGY.—(1) The study under this section shall include the development of a uniform national methodology which could be used to calculate State-specific family living standards and benefits based on other minimum benefit proposals.

(2) The methodology so developed shall be designed to identify a single uniform measure suitable for application in each State, and shall—

(A) take into account actual living costs in each State while permitting variances in such costs as between the different geographic areas of the State;

(B) take into account variations in actual living costs in each State for families of different sizes and composition; and

(C) specify an effective process for reassessing and updating both the methodology and the resulting family living standards and benefits based on other minimum benefit policies at least once every 4 years.

(3) The methodology so developed shall reflect the costs of basic necessities including housing, furnishings, food, clothing, transportation, utilities, and other maintenance items; and the study shall take into account variations in costs for different geographic areas of the State where such costs may be substantially different, and variations in costs for families of different sizes and composition.

(c) OTHER CONSIDERATIONS; PROGRESSION TO PROPOSED MINIMUM BENEFIT LEVELS.—In order to assess the implications of States moving to a new system of welfare benefits, the study shall include an analysis of the relationship between a State's fiscal capacity and other circumstances and constraints and the application of a full family living standard or other minimum benefit policy. The study shall propose a formula designed to achieve a uniform progression from the level of assistance currently being provided for low-income families with children under the AFDC program, the food stamp program, and the low-income energy assistance program, by each State, to a level based on the full family living standard or other minimum benefit policy for that State. For this purpose the Secretary shall define the term "low-income families with children" in a manner which reflects all families that include dependent children as defined for purposes of the AFDC program.

(d) REPORT AND RECOMMENDATIONS.—The Academy shall report its recommendations resulting from the study under this section to the Secretary no later than 24 months after the date of the enactment of this Act; and the Secretary shall promptly transmit such recommendations to the Congress.

(e) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 501. [42 U.S.C. 1315 note] FAMILY SUPPORT DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act and participating in the job opportunities and basic skills training program under part F of title IV of such Act, up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall prescribe, and no such project shall be conducted for a period of more than 3 years.

(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act, any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act and community-based organizations having experience and demonstrated effectiveness in providing services.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.

SEC. 502. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS.

(a) IN GENERAL.—In order to encourage States to employ or arrange for the employment of parents of dependent children receiving aid under State plans approved under section 402(a) of the Social Security Act as providers of child care for other children receiving such aid, up to 5 States may undertake and carry out demonstration projects designed to test whether such employment will effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of such Act by making additional child care services available to meet the requirements of section 402(g)(1)(A) of such Act while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider.

(b) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services shall consider all applications received from States desiring to conduct demonstration projects under this section, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section, and shall make grants to those States the applications of which are approved to assist them in carrying out such projects. Each project conducted under this section shall meet such conditions and requirements as the Secretary shall prescribe.

(c) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to carry out demonstration projects under this section, there is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992.

(d) EFFECTIVE DATE.—This section shall become effective on October 1, 1989.

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SEC. 504. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS.

(a) IN GENERAL.—Any State may establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements as the Secretary of Health and Human Services shall prescribe, except that no such project may include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders.

(b) ACTIVITIES UNDER PROJECT.—Activities that may be funded by a grant under this section include (whether conducted through the executive, legislative, or judicial branches of the State) the development of systematic procedures for enforcing access provisions of court orders, the establishment of special staffs to deal with and mediate disputes involving access (both before and after a court order has been issued), and the dissemination of information to parents.

(c) OTHER REQUIREMENTS.—In the case of any experimental, pilot, or demonstration project undertaken under this section, the project—

(1) must be designed to improve the financial well-being of families with children or otherwise improve the operation of the program or programs involved; and

(2) may not permit modifications in any program which would have the effect of disadvantaging children in need.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to assist in financing the projects established under this section, there is authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991.

(e) REPORT.—Not later than July 1, 1992, the Secretary of Health and Human Services shall submit to the Congress a report on the effectiveness of the demonstration projects established under this section in—

(1) decreasing the time required for the resolution of disputes related to child access,

(2) reducing litigation relating to access disputes, and
(3) improving compliance with court-ordered child support payments.

SEC. 505. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO EXPAND THE NUMBER OF JOB OPPORTUNITIES AVAILABLE TO CERTAIN LOW-INCOME INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with not less than 5 nor more than 10 nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting demonstration projects in accordance with subsection (b) to create employment opportunities for certain low-income individuals.

(b) NATURE OF PROJECT.—(1) Each nonprofit organization conducting a demonstration project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.

(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive aid to families with dependent children under part A of title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(c) CONTENT OF APPLICATIONS; SELECTION PRIORITY.—(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b)) and individuals receiving aid to families with dependent children under title IV of the Social Security Act in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving aid to families with dependent children under title IV of such Act.

(d) ADMINISTRATION.—Each nonprofit organization participating in a demonstration project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the job opportunities and basic skills training program (as provided for under title IV of the Social Security Act) in the areas served by the project.

(e) DURATION.—Each demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the nonprofit organization conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

(f) EVALUATION AND REPORT.—(1) The Secretary shall conduct an evaluation of the success of each demonstration project conducted under this section in creating job opportunities and may require each nonprofit organization conducting such a project to provide the Secretary with such information as the Secretary determines is necessary to prepare the report described in paragraph (2).

(2) Not later than January 1, 1993, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted under paragraph (1), together with such recommendations as the Secretary determines are appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,500,000 for each of the fiscal years 1990, 1991, and 1992.

SEC. 506. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS.

(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

(1) The State shall establish a "Teen Care Plan" that shall consist of the following:

(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community.

(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the "home base" for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a "peripheral" participant, receiving assistance and services from the home base.

(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

(A) has a history of academic problems;

(B) has a history of behavioral problems both in and out of school;

(C) comes from a one-parent household; or

(D) is pregnant or is a mother of a child.

(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

(A) shall consult with the Consortium on Adolescent Pregnancy;

(B) shall consider—

(i) the rate of teenage pregnancy in each State,

(ii) the teenage school dropout rate in each State,

(iii) the incidence of teenage substance abuse in each State, and

(iv) the incidence of teenage suicide in each State; and

(C) shall give priority to States whose applications—

(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

(ii) contain a "State support agreement" signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

(iv) indicate a demonstrably high rate of alcoholism among its residents.

(2) Of the States selected to participate in the demonstration projects conducted under this section—

(A) one shall be a geographically small State with a population of less than 1,250,000;

(B) one shall be a State with a population of over 20,000,000; and

(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.

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SEC. 608. MISCELLANEOUS TECHNICAL CORRECTIONS TO MEDICARE CATASTROPHIC COVERAGE ACT OF 1988.

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(e) [None assigned.] EXTENSION OF PILOT PROGRAM.—The Secretary of Health and Human Services shall extend through December 31, 1989, the pilot test program, being conducted by States under the Annual Grant Award Study established by the Joint State/Federal Cash Management Reform Task Force, on the same terms and conditions that existed as of September 30, 1988.

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(h) [42 U.S.C. 1396b note] QUALITY CONTROL TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to medicare-cost sharing for qualified medicare beneficiaries (as defined in section 1905(p) of such Act).

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[*Internal References.*—Social Security Act §§482(i), 484(f), 486(a), and 487(a) and (b) cite the Family Support Act of 1988. The catchlines to Social Security Act §§407, 466, 487, and 1925 and title IV and Parts A, C, and F; and §§402(a) and (g); 403(a), (c), (d), (k), and (l); 407(b), (c), (d), and (e); 409; 414; 452(g), (h), and (i); 471(a); 1108(a) and (b); 1115(a); 1902(a); 1903(u); and 1926(a) have footnotes referring to P.L. 100-485.]

P.L. 100-505, Approved October 18, 1988 (102 Stat. 2533)
Abandoned Infants Assistance Act of 1988

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SEC. 201. [42 U.S.C. 670 note] STUDY AND REPORT ON ASSISTANCE.

(a) STUDY.—The Secretary shall conduct a study for the purpose of—

(1) determining cost-effective methods for providing assistance to individuals for the medical costs of treatment of conditions arising from infection with the etiologic agent for acquired immune deficiency syndrome, including determining

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the feasibility of risk-pool health insurance for individuals at risk of such infection;

(2) determining the extent to which Federal payments under title XIX of the Social Security Act are being expended for medical costs described in paragraph (1); and

(3) providing an estimate of the extent to which such Federal payments will be expended for such medical costs during the 5-year period beginning on the date of the enactment of this Act.

(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this Act, complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

SEC. 301. [42 U.S.C. 670 note] DEFINITIONS.

For purposes of this Act:

(1) The term "acquired immune deficiency syndrome" includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

(2) The term "Secretary" means the Secretary of Health and Human Services.

[*Internal References.*—The catchlines to Social Security Act §470 and title XIX have footnotes referring to P.L. 100-505.]

P.L. 100-581, Approved November 1, 1988 (102 Stat. 2938)
[Indian Reorganization Act Amendments]

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SEC. 501. [None assigned.] That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of the judgment awarded to the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (including all interests and investment income accrued thereon) shall be used and distributed as provided in this title.

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SEC. 502. [None assigned.]

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(b)(1) The funds allocated to each Indian tribe under subsection (a), and any interest and investment income accrued on such funds, are hereby declared to be held in trust by the United States for the benefit of such Indian tribe and shall be invested by the Secretary of the Interior for the benefit of such Indian tribe.

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SEC. 503. [None assigned.] None of the funds held in trust by the United States under this title (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds made available under this title for programs or for distributions under any programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which any household or individual would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

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[*Internal References.*—The catchlines to Social Security Act §§428, 1612(b), 1613(a), and titles IV Part B and XVIII; and §§402(a), 403(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 100-581.]

P.L. 100-628, Approved November 7, 1988 (102 Stat. 3224)
Stewart B. McKinney Homeless Assistance Amendments Act of 1988

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SEC. 902. [None assigned.] REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) REVIEW OF POLICY.—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) REPORT TO CONGRESS.—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

SEC. 903. [42 U.S.C. 11381 note.] DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS AFDC FAMILIES IN WELFARE HOTELS.

(a) IN GENERAL.—In order to enable States to provide housing for homeless families who are recipients of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act in transitional facilities instead of in commercial or similar transient facilities, at least 2 but not more than 3 States may undertake and carry out demonstration projects in accordance with this section. States may use public or private nonprofit agencies in carrying out demonstration projects in accordance with this section. Demonstration projects under this section shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall prescribe.

(b) DUTIES OF SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary shall—

(1) consider all applications received from States desiring to conduct demonstration projects under this section;

(2) transmit to the Comptroller General for review under subsection (e) a copy of each such application received;

(3) approve at least 2 but not more than 3 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section; and

(4) make grants from funds appropriated to carry out this section to each State whose application is so approved to carry out the project that is the subject of the application.

(c) PROJECT REQUIREMENTS.—The Secretary shall not approve an application received from a State for a demonstration project under this section unless the State agency that administers the program of aid to families with dependent children in the State under a State plan approved under part A of title IV of the Social Security Act demonstrates that the project will—

(1) provide housing in transitional facilities only to homeless families who are recipients of aid to families with dependent children under the State plan and who reside in commercial or similar transient facilities;

(2) permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities in accordance with paragraph (1); and

(3) provide that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the State under this section must be less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(d) USE OF FUNDS.—Each State that receives funds under this section shall use such funds to—

(1) rehabilitate or construct transitional facilities which are easily convertible to permanent housing when such facilities are no longer needed as transitional facilities; and

(2) provide on-site social services at such facilities.

(e) GAO REVIEW OF APPLICATIONS.—Within 90 days after the Comptroller General receives from the Secretary a copy of an application submitted under this section, the Comptroller General shall review such application and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on whether the Federal share of the total amount of cash assistance to be provided under the project which is the subject of the application to families residing in transitional facilities plus the total amount of grants to be made to the State under this section is less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(f) AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there is authorized to be appropriated to the Secretary for the fiscal year 1990 not to exceed $20,000,000, which shall remain available until expended.

(g) DEFINITIONS.—As used in section 902 and this section:

(1) HOMELESS FAMILY.—The term "homeless family" means a dependent child or children and the relatives with whom such child or children are living, who—

(A) lack a fixed and regular nighttime address;

(B) have a primary residence that is a shelter designed for temporary accommodation, a hotel, or a motel; or

(C) are living in a place not designed for, or ordinarily used as, a regular sleeping accommodation.

(2) COMMERCIAL OR SIMILAR TRANSIENT FACILITIES.—The term "commercial or similar transient facilities" means transient accommodations in—

(A) a commercial hotel or motel operated by a privately owned for-profit entity; or

(B) a similar establishment which is not a transitional facility (whether or not directly operated or contracted for by the State or a political subdivision or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations).

(3) TRANSITIONAL FACILITY.—The term "transitional facility" means any facility operated by a State or local government or a nonprofit organization which, at a minimum—

(A) provides temporary and private sleeping accommodations, and temporary eating and cooking accommodations; and

(B) provides services to help families locate and retain permanent housing.

SEC. 904. [42 U.S.C. 3544] PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS.

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(c) ACCESS TO STATE EMPLOYMENT RECORDS.—

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(2) APPLICANT AND PARTICIPANT PROTECTIONS.—(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, officers and employees of the Department of Housing and Urban Development and representatives of public housing agencies may only use such information—

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner responsible for determining eligibility for or level of benefits, to inform such owner that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) PENALTY.—(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

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[*Internal References.*—The catchlines to Social Security Act titles III and IV Part A have footnotes referring to P.L. 100-628.]

P.L. 100-647, Approved November 10, 1988 (102 Stat. 3342)
Technical and Miscellaneous Revenue Act of 1988

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SEC. 8014. CLARIFICATION OF APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

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(b) [42 U.S.C. 402 note] TREATMENT OF EMPLOYEES WHOSE FEDERAL EMPLOYMENT TERMINATED AFTER MAKING AN ELECTION INTO SOCIAL SECURITY COVERAGE BUT BEFORE THE EFFECTIVE DATE OF THE ELECTION.—Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402(b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act), and

(2) such service terminated before the date on which such election became effective.

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SEC. 8019. [None assigned.] REPORTS REGARDING CERTAIN DISABILITY-RELATED BENEFITS.

(a) ELIGIBILITY FOR BENEFITS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report providing information on—

(1) the number of individuals with the complex related to acquired immune deficiency syndrome (hereinafter in this section referred to as "AIDS-related complex") who have made application for disability-related benefits under titles II and XVI of the Social Security Act during fiscal years 1988, 1987, and, to the extent feasible, 1986;

(2) the number of such applications approved, denied (by reason of denial), and reversed upon appeal;

(3) the rates of allowance and denial of such applications by State and region, to the extent feasible;

(4) the criteria, guidelines, or other information used to determine eligibility (including copies of the documents setting forth such criteria, guidelines, and information) including information about any changes in criteria that are under consideration;

(5) the total costs of disability-related benefits provided to individuals with AIDS-related complex during fiscal years 1988, 1987, and to the extent feasible, 1986; and

(6) to the extent available, the projected number of such applications that will likely be approved and denied and the estimated costs of such benefits for the next 3 fiscal years.

(b) COORDINATION OF FEDERAL AND STATE DISABILITY PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report describing what arrangements, if any, now exist to provide for coordination between the Social Security Administration and State disability agencies with respect to the provision of disability-related benefits under titles II and XVI of the Social Security Act and State disability insurance programs to individuals with acquired immune deficiency syndrome or AIDS-related complex and to make such individuals applying for any such benefits aware of the full range of Federal and State disability-related benefits for which such individuals may be eligible.

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SEC. 8102. [None assigned.] REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) REVIEW OF POLICY.—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) REPORT TO CONGRESS.—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

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SEC. 8403. APPLICATION OF WAGE INDICES IN CASE OF AREAS AFFECTED BY SECTION 4005(a)(1) OF OBRA OF 1987.

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(b) [None assigned.] HHS REPORT ON ADJUSTMENT OF HOSPITAL WAGE INDICES FOR FISCAL YEAR 1989.—

(1) The Secretary of Health and Human Services shall report to the Congress, not later than 60 days after the date of the enactment of this Act, on alternative methods for reimbursement under section 1886(d) of the Social Security Act to hospitals located in affected areas described in paragraph (2) for hospital dis-

charges occurring in fiscal year 1989 that would result in aggregate payments under title XVIII of such Act to hospitals in such areas in an amount no less than would have been paid without the enactment of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987. In reporting concerning alternative methods, the Secretary shall consider both legislative and administrative actions that would result in an aggregate increase in payments under such title and legislative and administrative actions that would not result in such an aggregate increase.

(2) An affected area described in this paragraph is an area for which the area wage index for fiscal year 1989 (described in section 1886(d)(3)(E) of the Social Security Act) was reduced below the amount otherwise applicable as a result of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987.

(c) [None assigned.] PROPAC STUDY AND REPORT.—The Prospective Payment Assessment Commission shall study and make a report to Congress within 9 months after the date of the enactment of this Act on the appropriate payment for hospitals affected by subparagraphs (B) and (C) of section 1886(d)(8) of the Social Security Act (as amended by subsection (a) of this section) and the appropriate treatment of the wage and wage-related costs of such hospitals in computing area wage indices.

* * * * * * *

SEC. 8405. [42 U.S.C. 1395ww note] ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES.

With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act.

SEC. 8411. [42 U.S.C. 1395b-1 note] TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS.

(a) DEMONSTRATION OF JOINT NURSING GRADUATE EDUCATION PROGRAMS.—

(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

(A) involves a substantial clinical component (as determined by the Secretary), and

(B) leads to a master's or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act, and shall be allowable as

reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1989, 1990, and 1991.

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SEC. 8421. TRIP FEES FOR CLINICAL LABORATORIES.

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(b) [42 U.S.C. 1395l note] BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act for tests not covered under the amendment made by subsection (a) in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.

(c) [None assigned.] STUDY.—The Secretary of Health and Human Services shall study reimbursement for specimen collection and transportation and personnel costs under section 1833(h)(3) of the Social Security Act and shall report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate by May 1, 1989. The study shall—

(1) survey carrier policies regarding such reimbursement,

(2) report on concerns expressed by clinical diagnostic laboratories concerning such reimbursement, and

(3) make recommendations to assure that such reimbursement is reasonable, covers the costs involved, and assures adequate access to clinical laboratory services for nursing facility residents.

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SEC. 8427. [42 U.S.C. 1395x note] PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act) transportation on a commercial airliner is covered under section 1861(s)(7) of the Social Security Act, the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.

SEC. 8431. [None assigned.] DELAY IN ISSUANCE OF FINAL REGULATIONS CONCERNING THE USE OF VOLUNTARY CONTRIBUTIONS AND PROVIDER-PAID TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS.

The Secretary of Health and Human Services shall not issue any final regulation prior to May 1, 1989, changing the treatment of voluntary contributions or provider-paid taxes utilized by States to receive Federal matching funds under title XIX of the Social Security Act.

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SEC. 8435. [42 U.S.C. 1396a note] CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES.

The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act that provides for coverage of case-management services described in section 1915(g)(2) of such Act, or to deny payment to a State for such services under section 1903(a)(1) of such Act on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles II, IV Part A, XVI (SSI), XVIII, and XIX, and §§202(b), (c), (e), (f), and (g); 406(e); 1833(h); 1861(s); and 1886(d) and (e) have footnotes referring to P.L. 100-647.]

P.L. 100-690, Approved November 18, 1988 (102 Stat. 4181)
Anti-Drug Abuse Act of 1988

* * * * * * *

Subtitle D—Native Hawaiian Health Care

SEC. 2301. [42 U.S.C. 11701 note] SHORT TITLE.
This subtitle may be cited as the "Native Hawaiian Health Care Act of 1988".

* * * * * * *

SEC. 2303. [42 U.S.C. 11702] COMPREHENSIVE HEALTH CARE MASTER PLAN FOR NATIVE HAWAIIANS.
(a) DEVELOPMENT.—The Secretary may make a grant to, or enter into contract with, Papa Ola Lokahi for the purpose of developing a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

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SEC. 2304. [42 U.S.C. 11703] NATIVE HAWAIIAN HEALTH CENTERS.
(a) COMPREHENSIVE HEALTH PROMOTION, DISEASE PREVENTION, AND PRIMARY HEALTH SERVICES.—(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

* * * * * * *

(2) In addition to paragraph (1), the Secretary may make grants to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health centers to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.
(b) QUALIFIED ENTITY.—An entity is a qualified entity for purposes of subsection (a)(1) if the entity is—
(1) a Native Hawaiian health center;
(2) a Native Hawaiian organization; or
(3) a public or nonprofit private health provider.
(c) SERVICES TO BE PROVIDED.—(1) Each recipient of funds under subsection (a)(1) shall provide the following services:

* * * * * * *

(B) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators.

* * * * * * *

SEC. 2305. [42 U.S.C. 11704] ADMINISTRATIVE GRANT FOR PAPA OLA LOKAHI.
(a) IN GENERAL.—In addition to any other grant or contract under this subtitle, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—
(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 2303;
(2) training for the persons described in section 2304(c)(1)(B); or
(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services.

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SEC. 2306. [42 U.S.C. 11705] ADMINISTRATION OF GRANTS AND CONTRACTS.

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(c) ADMINISTRATIVE REQUIREMENTS.—The Secretary may not make a grant or enter into a contract under this subtitle with an entity unless the entity—

* * * * * * *

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—

(A) if the entity will provide under the grant or contract any such health services directly—

(i) the entity has entered into a participation agreement under such plan; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

* * * * * * *

SEC. 2307. [42 U.S.C. 11706] ASSIGNMENT OF PERSONNEL.

(a) IN GENERAL.—The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purposes of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) APPLICABLE FEDERAL PERSONNEL PROVISIONS.—Any assignment of personnel made by the Secretary under any agreement entered into under the authority of paragraph (1) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5, United States Code.

* * * * * * *

Subtitle G—Denial of Federal Benefits to Drug Traffickers and Possessors.

SEC. 5301. [21 U.S.C. 853a] DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS AND POSSESSORS.

(a) DRUG TRAFFICKERS.—(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances (as such terms are defined for purposes of the Controlled Substances Act) shall—

* * * * * * *

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

* * * * * * *

(d) DEFINITIONS.—As used in this section—

(1) the term "Federal benefit"—

* * * * * * *

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

* * * * * * *

[*Internal References.*—The catchlines to Social Security Act titles IV, XVI (SSI), and XVIII have footnotes referring to P.L. 100-690.]

P.L. 100-713, Approved November 23, 1988 (102 Stat. 4784)
Indian Health Care Amendments of 1988

* * * * * * *

PROVISION OF SERVICES IN MONTANA

SEC. 712. [None assigned.] (a) The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the decision of the United States Court of Appeals for the Ninth Circuit in McNabb for McNabb v. Bowen, 829 F.2d 787 (9th Cir. 1987).

(b) The provisions of subsection (a) shall not be construed to be an expression of the sense of the Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana.

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[*Internal Reference.*—The catchline to Social Security Act title XVIII has a footnote to P.L. 100-713.]

APPENDIX A

1988 Cost-of-Living Increase and Other Determinations[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—
(1) A 4.2 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);
(2) An increase in the Federal SSI (title XVI) benefit amounts for 1988 to $354 for an eligible individual, $532 for an eligible individual with an eligible spouse, and $177 for an essential person (section 1617 of the Act);
(3) The average of the total wages for 1986 to be $17,321.82;
(4) The Social Security contribution and benefit base to be $45,000 for remuneration paid in 1988 and self-employment income earned in taxable years beginning in 1988;
(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1988 to be $470;
(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1988 to be $700 for beneficiaries age 65 through 69 and $510 for beneficiaries under age 65;
(7) The "old-law" contribution and benefit base to be $33,600 for 1988.
We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1988, and the computation of the OASDI fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.
Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1987 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1986 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1987 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1988 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1988 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1988 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1988 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1988 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 4.2 percent for benefits under titles II and XVI of the Social Security Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 4.2 percent beginning with the December 1987 benefits, which are payable on December 31, 1987. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.2 percent effective for payments made for the month of January 1988 but paid on December 31, 1987. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1988 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1987 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1987, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act,

[1]This material was published in the **Federal Register** on October 29, 1987, at 52 FR 41672.

and to increase maximum benefits payable to a family. For December 1987, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1986 through the third quarter of 1987. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1987 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1986, was: for July 1986, 322.9; for August 1986, 323.4; and for September 1986, 324.9. The arithmetical mean for this calendar quarter is 323.7 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1987 was: For July 1987, 335.6; for August 1987, 337.4; and for September 1987, 339.1. The arithmetical mean for this calendar quarter is 337.4. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1987 exceeds that for the calendar quarter ending September 30, 1986 by 4.2 percent, a cost-of-living benefit increase of 4.2 percent is effective for benefits under title II of the Act beginning December 1987.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1988, benefits will increase by 4.2 percent beginning with benefits for December 1987 which will be received December 31, 1987. In the case of first eligibility after 1987, the 4.2 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 4.2 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1987); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1988, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.2 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $140.30 for an individual under sections 227 and 228 of the Act is increased by 4.2 percent to obtain the new amount of $146.10. The present monthly benefit amount of $70.30 for a spouse under section 227 is increased by 4.2 percent to $73.20.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 4.2 percent effective January 1988. Therefore, the yearly Federal SSI benefit amount of $4,080 for an eligible individual, $6,120 for an eligible individual with an eligible spouse and $2,040 for an essential person, which became effective January 1987, are increased, effective with January 1988, to $4,248, $6,384, and $2,124 respectively after rounding. The monthly payment amount is determined by dividing the yearly amount by 12, and subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1986

The determination of the average wage figure for 1986 is based on the 1985 average wage figure of $16,822.51 announced in the **Federal Register** on November 5, 1986 (51 FR 40256), along with the percentage increase in average wages from 1985 to 1986 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $15,900.51 and $16,372.45 for 1985 and 1986, respectively. To determine an average wage figure for 1986 at a level that is consistent with the series of average wages for 1951 to 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1985 average wage figure of $16,822.51 by the percentage increase in average wages from 1985 to 1986 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1986 = $16,822.51 × $16,372.45 ÷ $15,900.51 = $17,321.82. Therefore, the average wage for 1986 is determined to be $17,321.82.

Contribution and Benefit Base

General. The contribution and benefit base is $45,000 for remuneration paid in 1988 and self-employment income earned in taxable years beginning in 1988.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1988 shall be equal to the 1987 base of $43,800 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1986 to (2) the average amount of those wages for the calendar year 1985. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1985 was previously determined to be $16,822.51. The average wage for calendar year 1986 has been determined to be $17,321.82 as stated herein.

Amount. The ratio of the average wage for 1986, $17,321.82, compared to that for 1985, $16,822.51, is 1.029681. Multiplying the 1987 contribution and benefit base of $43,800 by the ratio 1.029681 produces the amount of $45,100.03 which must then be rounded to $45,000. Accordingly, the contribution and benefit base is determined to be $45,000 for 1988.

Quarter of Coverage Amount

General. The 1988 amount of earnings required for a quarter of coverage is $470. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1988 shall be equal to the 1978 amount of $250 multiplied by the ratio of: (1) The average amount, per employee, of total wages for calendar year 1986 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1986 has been determined to be $17,321.82 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1986, $17,321.82, compared to that for 1976, $9,226.48, is 1.8774. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.8774 produces the amount of $469.35 which must then be rounded to $470. Accordingly, the quarter of coverage amount is determined to be $470 for 1988.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1987 was determined by this formula to be $680. Under the formula, the exempt amount for 1988 shall be the 1987 exempt amount multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1986 to (2) the average amount of those wages for calendar year 1985. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1986, $17,321.82, compared to that for 1985, $16,822.51, is 1.029681.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1987 retirement earnings test monthly exempt amount of $680 by the ratio of 1.029681 produces the amount of $700.18. This must then be rounded to $700. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $700 for 1988. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,400.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $500 for 1987. The formula provides that the exempt amount for 1988 shall be the 1987 exempt amount for beneficiaries under age 65 multiplied by the ratio of: (1) The average amount, per employee, of the total wages for calendar year 1986 to (2) the average amount of those wages for calendar year 1985. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1986, $17,321.82, compared to that of 1985, $16,822.51, is 1.029681.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1987 retirement earnings test monthly exempt amount of $500 by the ratio 1.029681 produces the amount of $514.84. This must then be rounded to $510. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $510 for 1988. The, corresponding retirement earnings test annual exempt amount for these beneficiaries is $6,120.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978 (43 FR 60877) and July 15, 1982 (47 FR 30731) respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1988, we divide the average of the total wages for 1986, $17,321.82, by the average of the total wages for each year prior to 1986 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act

credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1988.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1988 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1986, $17,321.82, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1988, the ratio is 1.7712487. Multiplying the 1979 amounts of $180 and $1,085 by 1.7712487 produces the amounts of $318.82 and $1,921.80. These must then be rounded to $319 and $1,922. Accordingly, the portions of the average indexed monthly earnings to be used in 1988 are determined to be the first $319, the amount between $319 and $1,922, and the amount over $1,922.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1988, or who die in 1988 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $319 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $319 and through $1,922, plus

(c) 15 percent of the average indexed monthly earnings over $1,922.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a Final Rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1988 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1986, $17,321.82, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1988, the ratio is 1.7712487. Multiplying the amounts of $230, $332, and $433 by 1.7712487 produces the amounts of $407.39, $588.05, and $766.95. These amounts are then rounded to $407, $588, and $767. Accordingly, the portions of the primary insurance amounts to be used in 1988 are determined to be the first $407, the amount between $407 and $588, the amount between $588 and $767, and the amount over $767.

Consequently, for the family of a worker who becomes age 62 or dies in 1988, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $407 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $407 through $588, plus

(c) 134 percent of the worker's primary insurance amount over $588 through $767, plus

(d) 175 percent of the worker's primary insurance amount over $767.

This amount is then rounded to the next lower multiple of 10 cents if it is not already a multiple of 10 cents. This formula and the adjustments we have described

are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General. The 1988 "old-law" contribution and benefit base is $33,600. This is the base that would have been effective under the Social Security Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Social Security Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Social Security Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1987 base multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year of 1986 to (2) the average amount of those wages for the calendar year of 1985. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1985 was previously determined to be $16,822.51. The average wage for calendar year 1986 has been determined to be $17,321.82, as stated herein.

Amount. The ratio of the average wage for 1986, $17,321.82, compared to that for 1985, $16,822.51, is 1.029681. Multiplying the 1987 "old-law" contribution and benefit base amount of $32,700 by the ratio of 1.029681 produces the amount of $33,670.57 which must then be rounded to $33,600. Accordingly, the "old-law" contribution and benefit base is determined to be $33,600 for 1988.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of Pub. L. 98-21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of: (1) The increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1987 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1987, including advance tax transfers for January 1987, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1987, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1987 (including advance tax transfers for January 1987) equaled $65,227 million, and the expenditures are estimated to be $209,580 million. Thus, the OASDI fund ratio for 1987 is 31.1 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-13.805, and 13.807 Social Security Programs.)

Dated: October 19, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1986	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1987	Special minimum maximum family benefit payable for Dec. 1987
$19.40	11	$20.20	$30.40
38.50	12	40.10	60.40
57.90	13	60.30	90.70
77.10	14	80.30	120.70
96.40	15	100.40	150.70
115.80	16	120.60	181.20
135.10	17	140.70	211.20
154.40	18	160.80	241.40
173.70	19	180.90	271.50
192.80	20	200.80	301.50
212.30	21	221.20	331.90
231.50	22	241.20	362.00
251.00	23	261.50	392.50
270.20	24	281.50	422.50
289.40	25	301.50	452.40
308.90	26	321.80	483.00
328.20	27	341.90	513.10
347.40	28	361.90	543.00
366.60	29	381.90	573.30
385.80	30	402.00	603.30

APPENDIX B

1989 Cost-of-Living Increase and Other Determinations[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 4.0 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1989 to $368 for an eligible individual, $553 for an eligible individual with an eligible spouse, and $184 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1987 to be $18,426.51;

(4) The Social Security contribution and benefit base to be $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1989 to be $500;

(6) The monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1989 to be $740 for beneficiaries age 65 through 69 and $540 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $35,700 for 1989.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1989, and the computation of the old-age, survivors, and disability insurance (OASDI) fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1988 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1987 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1988 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1989 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1989 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1989 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1989 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1989 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 4.0 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 4.0 percent beginning with the December 1988 benefits, which are payable on January 3, 1989. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.0 percent effective for payments made for the month of January 1989 but paid on December 30, 1988. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1989 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation

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[1]This material was published in the Federal Register on October 31, 1988, at 53 FR 43932, and corrected on Dec. 8, 1988, at 53 FR 49638.

Under section 215(i) of the Act, the third calendar quarter of 1988 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1988, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1988, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1987 through the third quarter of 1988. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1988 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers (reference base of 100 for 1982-1984) for each month in the quarter ending September 30, 1987, was: for July 1987, 112.7; for August 1987, 113.3; and for September 1987, 113.8. The arithmetical mean for this calendar quarter is 113.3 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1988, was: For July 1988, 117.2; for August 1988, 117.7; and for September 1988, 118.5. The arithmetical mean for this calendar quarter is 117.8. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1988, exceeds that for the calendar quarter ending September 30, 1987 by 4.0 percent, a cost-of-living benefit increase of 4.0 percent is effective for benefits under title II of the Act beginning December 1988.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1989, benefits will increase by 4.0 percent beginning with benefits for December 1988 which will be received January 3, 1989. In the case of first eligibility after 1988, the 4.0 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 4.0 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1988); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1989, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.0 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $146.10 for an individual under sections 227 and 228 of the Act is increased by 4.0 percent to obtain the new amount of $151.90. The present monthly benefit amount of $73.20 for a spouse under section 227 is increased by 4.0 percent to $76.10.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 4.0 percent effective January 1989. Therefore, the yearly Federal SSI benefit amount of $4,248 for an eligible individual, $6,384 for an eligible individual with an eligible spouse, and $2,124 for an essential

person, which became effective January 1988, are increased, effective January 1989, to $4,416, $6,636, and $2,208 respectively after rounding. The corresponding monthly amounts for 1989 are determined by dividing the yearly amounts by 12, giving $368, $553, and $184, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1987

The determination of the average wage figure for 1987 is based on the 1986 average wage figure of $17,321.82 announced in the **Federal Register** on October 29, 1987 (52 FR 41672), along with the percentage increase in average wages from 1986 to 1987 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $16,372.45 and $17,416.59 for 1986 and 1987, respectively. To determine an average wage figure for 1987 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1986 average wage figure of $17,321.82 by the percentage increase in average wages from 1986 to 1987 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1987 = $17,321.82 × $17,416.59 ÷ $16,372.45 = $18,426.51.

Therefore, the average wage for 1987 is determined to be $18,426.51.

Contribution and Benefit Base

General

The contribution and benefit base is $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1989 shall be equal to the 1988 base of $45,000 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1987 to (2) the average amount of those wages for the calendar year 1986. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321.82. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1987[2] contribution and benefit base of $45,000 by the ratio 1.0637745 produces the amount of $47,869.85 which must then be rounded to $48,000. Accordingly, the contribution and benefit base is determined to be $48,000 for 1989.

Quarter of Coverage Amount

General

The 1989 amount of earnings required for a quarter of coverage is $500. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that

[2]Should read "1988".

a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation

Under the prescribed formula, the quarter of coverage amount for 1989 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1987 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Quarter of Coverage Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1976, $9,226.48, is 1.99713. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.99713 produces the amount of $449.28 which must then be rounded to $500. Accordingly, the quarter of coverage amount is determined to be $500 for 1989.

Retirement Earnings Test Exempt Amounts

(a) Beneficiaries Aged 70 or Over

Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) Beneficiaries Aged 65 Through 69

The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1988 was determined by this formula to be $700. Under the formula, the exempt amount for 1989 shall be the 1988 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2) the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Aged 65 through 69

Multiplying the 1988 retirement earnings test monthly exempt amount of $700 by the ratio of 1.0637745 produces the amount of $744.64. This must then be rounded to $740. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $740 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,880.

(c) Beneficiaries Under Age 65

Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $510 for 1988. The formula provides that the exempt amount for 1989 shall be the 1988 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2), the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that of 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Under Age 65

Multiplying the 1988 retirement earnings test monthly exempt amount of $510 by the ratio 1.0637745 produces the amount of $542.52. This must then be rounded to $540. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $540 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $6,480.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1989, we divide the average of the total wages for 1987, $18,426.51, by the average of the total wages for each year prior to 1987 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1989.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the 1979 amounts of $180 and $1,085 by 1.88421 produces the amounts of $339.16 and $2,044.37. These must then be rounded to $339 and $2,044. Accordingly, the portions of the average indexed monthly earnings to be used in 1989 are determined to be the first $339, the amount between $339 and $2,044, and the amount over $2,044.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1989, or who die in 1989 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $339 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $339 and through $2,044, plus

(c) 15 percent of the average indexed monthly earnings over $2,044.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the amounts of $230, $332, and $433 by 1.88421 produces the amounts of $433.37, $625.56, and $815.86. These amounts are then rounded to $433, $626, and $816. Accordingly, the portions of the primary insurance amounts to be used in 1989 are determined to be the first $433, the amount between $433 and $626, the amount between $626 and $816, and the amount over $816.

Consequently, for the family of a worker who becomes age 62 or dies in 1989, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $433 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $433 through $626, plus

(c) 134 percent of the worker's primary insurance amount over $626 through $816, plus

(d) 175 percent of the worker's primary insurance amount over $816.

This amount is then rounded to the next lower multiple of $0.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General

The 1989 "old-law" contribution and benefit base is $35,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1988 base multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year of 1987 to (2) the average amount of those wages for the calendar year of 1986. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321.82. The average wage for calendar year 1987 has been determined to be $18,426.51, as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1988 "old-law" contribution and benefit base amount of $33,600 by the ratio of 1.0637745 produces the amount of $35,742.82 which must then be rounded to $35,700. Accordingly, the "old-law" contribution and benefit base is determined to be $35,700 for 1989.

OASDI Fund Ratio

General

Section 215(i) of the Act was amended by section 112 of Pub. L. 98-21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of (1) the increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1988 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1988, including advance tax transfers for January 1988, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1988, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1988 (including advance tax transfers for January 1988) equaled $90,492 million, and the expenditures are estimated to be $222,471 million. Thus, the OASDI fund ratio for 1988 is 40.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-13.805, and 13.807 Social Security Programs)

Dated: October 27, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
$20.20	11	$21.00	$31.60
40.10	12	41.70	62.80
60.30	13	62.70	94.30
80.30	14	83.50	125.50
100.40	15	104.40	156.70
120.60	16	125.40	188.40
140.70	17	146.30	219.60
160.80	18	167.20	251.00
180.90	19	188.10	282.30
200.80	20	208.80	313.50
221.20	21	230.00	345.10
241.20	22	250.80	376.40

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS (Cont.)

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
261.50	23	271.90	408.20
281.50	24	292.70	439.40
301.50	25	313.50	470.40
321.80	26	334.60	502.30
341.90	27	355.50	533.60
361.90	28	376.30	564.70
381.90	29	397.10	596.20
402.00	30	418.00	627.40

APPENDIX C

FORMULA FOR COMPUTING BENEFITS[1]

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1989, we divide the average of the total wages for 1987, $18,426.51, by the average of the total wages for each year prior to 1987 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1989.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the 1979 amounts of $180 and $1,085 by 1.88421 produces the amounts of $339.16 and $2,044.37. These must then be rounded to $339 and $2,044. Accordingly, the portions of the average indexed monthly earnings to be used in 1989 are determined to be the first $339, the amount between $339 and $2,044, and the amount over $2,044.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1989, or who die in 1989 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $339 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $339 and through $2,044, plus

(c) 15 percent of the average indexed monthly earnings over $2,044.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).[2]

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[1] In compliance with Social Security Act §215(a)(1)(D), this formula was published in the **Federal Register** (49 FR 43778) on October 31, 1984.

For 1988 computations, see **Federal Register** (52 FR 41672) dated October 29, 1987. (Vol. II, p. 929)

For 1989 computations, see **Federal Register** (53 FR 43932) dated October 31, 1988. (Vol. II, p. 937)

[2] P.L. 97-35, §2206, changed the provision regarding rounding, effective with respect to initial calculations and adjustments which are attributable to periods after August 1981.

APPENDIX D

"AVERAGE OF THE TOTAL WAGES" FOR INDEXING PURPOSES[1]

Calendar Year	Average Wages	Calendar Year	Average Wages
1951	$2,799.16	1969	5,893.76
1952	2,973.32	1970	6,186.24
1953	3,139.44	1971	6,497.08
1954	3,155.64	1972	7,133.80
1955	3,301.44	1973	7,580.16
1956	3,532.36	1974	8,030.76
1957	3,641.72	1975	8,630.92
1958	3,673.80	1976	9,226.48
1959	3,855.80	1977	9,779.44
1960	4,007.12	1978	10,556.03
1961	4,086.76	1979	11,479.46
1962	4,291.40	1980	12,513.46
1963	4,396.64	1981	13,773.10
1964	4,576.32	1982	14,531.34
1965	4,658.72	1983	15,239.24
1966	4,938.36	1984	16,135.07
1967	5,213.44	1985	16,822.51
1968	5,571.76	1986	17,321.82
		1987	18,426.51

[1]See Social Security Act §§203(f)(8)(B)(ii)(I); 215(a)(1)(B)(ii), (a)(1)(D); and 230(b)(2). Figures for 1951 through 1977 were published at 43 FR 61016 on December 29, 1978.

Figures for:	Published at:	Date:
1978	44 FR 62956	November 1, 1979
1979	45 FR 76252	November 18, 1980
1980	46 FR 53791	October 30, 1981
1981	47 FR 51003	November 10, 1982
1982	48 FR 50414	November 1, 1983
1983	49 FR 43776	October 31, 1984
1984	50 FR 45558	October 31, 1985
1985	51 FR 40256	November 5, 1986
1986	52 FR 41672	October 29, 1987
1987	53 FR 43934	October 31, 1988

APPENDIX E

["Old Law" Contribution and Benefit Base
Special Minimum Benefits—"Year of Coverage"]

Year	Amount	Authority	
1977	$16,500	SSAct §230	
1978	17,700	SSAct §230	
1979	18,900	44 FR 28881	May 17, 1979
1980	20,400	45 FR 21715	April 2, 1980
1981	22,200	46 FR 39477	August 3, 1981
1982	24,300	47 FR 6098	February 10, 1982
1983	26,700	48 FR 7814	February 24, 1983
1984	28,200	49 FR 9959	March 16, 1984
1985	29,700	50 FR 11562	March 22, 1985
1986	31,500	50 FR 45558	October 31, 1985
1987	32,700	51 FR 40256	November 5, 1986
1988	33,600	52 FR 41672	October 29, 1987
1989	35,700	53 FR 43932	October 31, 1988

APPENDIX F

CURRENT AND PAST MEDICARE COST-SHARING AND PREMIUM AMOUNTS

A. HI Cost-Sharing Amounts[1]

Calendar Year	Initial Deductible	Hospital		Daily Coinsurance
		61-90 Days	Lifetime Reserve	Skilled Nursing Facility, 21-100
1966-68*	$40	$10	$20	$ 5.00
1969	44	11	22	5.50[2]
1970	52	13	26	6.50[3]
1971	60	15	30	7.50[4]
1972	68	17	34	8.50[5]
1973	72	18	36	9.00[6]
1974	84	21	42	10.50[7]
1975	92	23	46	11.50[8]
1976	104	26	52	13.00[9]
1977	124	31	62	15.50[10]
1978	144	36	72	18.00[11]
1979	160	40	80	20.00[12]
1980	180	45	90	22.50[13]
1981	204	51	102	25.50[14]
1982	260	65	130	32.50[15]
1983	304	76	152	38.00[16]
1984	356	89	178	44.50[17]
1985	400	100	200	50.00[18]
1986	492	123	246	61.50[19]
1987	520	130	260	65.00[20]
1988	540	135	270	67.50[21]
1989	560[22]			

*Hospital benefits first available in July 1966, except lifetime reserve benefits first available in January 1968. Skilled nursing facility benefits first available in January 1967.

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[1]See §1813.
[2]33 FR 14380; September 24, 1968.
[3]34 FR 15264; September 30, 1969.
[4]35 FR 15254; September 30, 1970.
[5]36 FR 19271; October 1, 1971.
[6]37 FR 21452; October 11, 1972.
[7]38 FR 28102; October 11, 1973.
[8]39 FR 35699; October 3, 1974.
[9]40 FR 45216; October 1, 1975.
[10]41 FR 43220; September 30, 1976.
[11]42 FR 51669; September 29, 1977.
[12]43 FR 44891; September 29, 1978.
[13]44 FR 55660; September 27, 1979.
[14]45 FR 65042; October 1, 1980.
[15]46 FR 47115; September 24, 1981.
[16]47 FR 43631; October 1, 1982.
[17]48 FR 44912; September 30, 1983.
[18]49 FR 38513; September 28, 1984.
[19]50 FR 39940; September 30, 1985.
[20]51 FR 32691; September 15, 1986.
Revised by 51 FR 42007; November 20, 1986.
[21]52 FR 35056; September 16, 1987.
[22]53 FR 38357; September 30 1988.
See also 53 FR 44144; November 1, 1988.

B. HI and SMI Premium Rates

Period	Standard Monthly Premium Rate		Catastrophic Cov. Prem.	SMI Adequate Actuarial Rates[1]	
	HI[2]	SMI[1]		Aged	Disabled
7/66-3/68	.....	$ 3.00		.....	.....
4/68-6/70	.....	4.00[3]		.....	.....
7/70-6/71	.....	5.30[4]		.....	.....
7/71-6/72	.....	5.60[5]		.....	.....
7/72-6/73	.....	5.80[6]		.....	.....
7/73-6/74	$ 33.00[7]	6.30[7]		$6.30	$14.50[8]
7/74-6/75	36.00[9]	6.70		6.70	18.00[10]
7/75-6/76	40.00[11]	6.70		7.50	18.50[12]
7/76-6/77	45.00[13]	7.20		10.70	19.00[14]
7/77-6/78	54.00[15]	7.70		12.30	25.00[16]
7/78-6/79	63.00	8.20		13.40	25.00[17]
7/79-6/80	69.00	8.70		13.40	25.00[18]
7/80-6/81	78.00[19]	9.60		16.30	25.50[20]
7/81-6/82	89.00[21]	11.00		22.60	36.60[22]
7/82-6/83	113.00	12.20		24.60	42.10[23]
7/83-12/83	113.00	12.20[24]		27.00	46.10[25]
1/84-12/84	155.00[26]	14.60		29.20	54.30[27]
1/85-12/85	174.00	15.50		31.00	52.70[28]
1/86-12/86	214.00	15.50		31.00	40.80[29]
1/87-12/87	226.00[30]	17.90[31]		35.80[31]	53.00[31]
1/88-12/88	234.00[32]	24.80[33]		49.60[33]	48.60[33]
1/89-12/89	156.00[34]	27.90[35]	4.00*[35]	55.80[35]	34.30[35]

[1]See 1839(c).
[2]See 1818.
[3]32 FR 21044; December 30, 1967.
33 FR 1215; January 30, 1968.
34 FR 223; January 7, 1969.
[4]34 FR 20442; December 31, 1969.
[5]35 FR 20018; December 31, 1970.
[6]37 FR 103; January 5, 1972.
[7]38 FR 93; January 3, 1973.
[8]38 FR 94; January 3, 1973.
[9]39 FR 1523; January 10, 1974.
[10]39 FR 1658; January 11, 1974.
[11]39 FR 45309; December 31, 1974.
[12]40 FR 1289; January 7, 1975.
[13]40 FR 59472; December 24, 1975.
[14]41 FR 1310; January 7, 1976.
[15]41 FR 54823; December 15, 1976.
[16]41 FR 55751; December 22, 1976.
[17]42 FR 65275; December 30, 1977.
[18]43 FR 61010; December 29, 1978.
[19]44 FR 73164; December 17, 1979.
[20]44 FR 77264; December 31, 1979.
[21]45 FR 85160; December 24, 1980.
[22]45 FR 85161; December 24, 1980.
[23]46 FR 63389; December 31, 1981.
[24]48 FR 26891; June 10, 1983.
[25]47 FR 58366; December 30, 1982.
[26]48 FR 44913; September 30, 1983.
[27]48 FR 44914; September 30, 1983.
[28]49 FR 38510; September 28, 1984.
[29]50 FR 39932; September 30, 1985.
[30]51 FR 35053; October 1, 1986. Revised by 51 FR 42007; November 20, 1986.
[31]51 FR 35291; October 2, 1986. Confirmed by 51 FR 42007; November 20, 1986.
[32]52 FR 35056; September 16, 1987.
[33]52 FR 36716; September 30, 1987.
[34]53 FR 45161; November 8, 1988.
[35]53 FR 38348; September 30, 1988.
*Puerto Rico residents $1.30. Residents of other U.S. territories and commonwealths $2.10.

NOTE: For July and August 1973, the promulgated SMI standard premium rate shown above was reduced by the Cost of Living Council to $5.80 and $6.10, respectively.

APPENDIX G

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration[1]

Termination of Capital Expenditure Review Agreements Under Section 1122 of the Social Security Act

The Department of Health and Human Services announces that, as of October 1, 1987, it has terminated agreements between the Secretary and participating States to carry out provisions of Section 1122 of the Social Security Act (the Act) and will no longer withhold Medicare and Medicaid funds based on past determinations under such agreements. With repeal of Title XV of the Public Health Services (PHS) Act, effective on January 1, 1987, the Department no longer appropriated funds available to support State capital expenditure review activities or for administration of the program.

The section 1122 program was an early cost containment measure established under section 221 of the Social Security Amendments of 1972 (Pub. L. 92-603). The intent of legislation was to deter unwarranted capital expenditures by health care facilities and to support health planning activities in various States by requiring review and approval of proposed capital expenditures based upon plans, standards, and criteria developed by State and local health planning agencies. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 185 (1972).) Section 1122 of the Act created a voluntary capital expenditure review program in which States were able to participate by entering into an agreement with the Secretary under section 1122(b). Agreements with sixteen States and one territory were terminated as of October 1, 1987. Under the section 1122 agreements, the Health[2] Financing Administration (HCFA) has withheld the capital portion of Medicare and Medicaid reimbursements for services furnished by a facility that proceeded with a disapproval capital project. The regulations pertinent to the section 1122 program are codified at 42 CFR Part 100 and 42 CFR 405.1890, 413.161, and 447.35.

The statutory background for the Federal funding of section 1122 reviews is as follows. When section 1122 of the Act was first enacted by section 221 of Pub. L. 92-603, section 1122(c) provided that the costs of State reviews under section 1122 would be paid by the Secretary from the Medicare Hospital Insurance Trust Fund. In fact, payments were made from the Trust Fund for the initial years of implementation: Fiscal years (FYs) 1974, 1975, and part of 1976. When Title XV of the PHS Act was enacted in 1975, establishing a comprehensive National Health Planning Program, Congress provided that, for States that chose to participate in the section 1122 program, the conduct of section 1122 reviews was to be one of the required functions of the State Health Planning and Development Agencies under their Title XV designation agreements. Accordingly, the State agency grants under section 1525 of the PHS Act would be available to pay the costs of the section 1122 reviews. Based on that Congressional action, the Department ceased making payments for section 1122 reviews from the Medicare Trust Fund.

Under section 607(a) of the Social Security Amendments of 1983 (Pub. L. 98-21), Congress amended section 1122(c) to authorize payments to States for the costs of their reviews from the general fund of the Treasury, rather than from the Medicare Hospital Insurance Trust Fund. Nothing in the legislative history of that amendment suggests that Congress took issue with the Department's position that the costs of section 1122 reviews were payable from a State's section 1525 grant.

On November 14, 1986, the President signed Pub. L. 99-660. Section 701(a) of Pub. L. 99-660 repealed the comprehensive health planning authority, Title XV of the PHS Act, effective January 1, 1987. However, under Chapter VIII of Title I of the Urgent Supplemental Appropriations Act for Fiscal Year 1986 (Pub. L. 99-349), enacted on July 2, 1986, States were permitted to use unobligated funds available for carryover to continue Title XV functions, including section 1122 reviews, through September 30, 1987. The elimination of Title XV health planning authority and the lack of any other funds appropriated to support these reviews effectively leave the section 1122 program without a mechanism of funding. While section 1122(c) may be viewed as an authorization of appropriations for section 1122 activities, apart from Title XV, Congress has not chosen to appropriate funds under that authority. Therefore the Department terminated section 1122 agreements with States effective October 1, 1987.

For several reasons, the repeal of Title XV also makes administration of section 1122 impossible even if a State were to fund its own activities. First is the lack of any

[1]This material was published in the Federal Register on March 31, 1988, at 53 FR 10431.
[2]Probably should read "Health Care".

continuing entity that could serve as the designated planning agency. Section 1122(b) of the Act, which makes reference to section 1122(d)(1)(B)(ii), provides that the designated planning agency must be either a State agency established pursuant to section 314(a) or section 604(a) of the PHS Act, or a local agency established under section 314(b) of the PHS Act. The 314(a) and 314(b) agencies were the predecessors to the State Health Planning and Development Agency and the Health Systems Agency provided for under Title XV. The 604(a) agency was the agency charged with administration of the former Hill-Burton program. Since the agencies funded under Title XV no longer are designated or funded under that title, if is apparent that there is not[1] longer an entity eligible to be designated for purposes of section 1122 of the Act. Chapter VIII of Title I of Pub. L. 99-349 provided an interim measure to permit the former State Health Planning and Development Agencies to carry out these activities during FY 1987, but this amendment has no further effect.

In addition, it is important to note that, under section 1122, designated planning agencies were required to review proposed capital expenditures to determine their conformity with applicable "standards, criteria, or plans developed pursuant to the Public Health Service Act (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1966) to meet the need for adequate health care facilities * * *" (Section 1122(b).) The agencies are not authorized to apply any other criteria in their reviews. As a practical matter, this requirement called for the designated planning agency to review proposed expenditures for conformity with the State health plan and the health systems plan developed under Title XV, given that the plans developed long ago under sections 314(a), 314(b), and 604 of the PHS Act and under the Community Mental Health Centers Act have been out of date for many years. Because no plans, criteria, or standards are currently being developed under any of these statutory authorities, there is nothing against which a proposed capital expenditure may properly be judged for conformity.

Finally, in the absence of funding under Title XV of the PHS Act, the only source of funds for payment to States for their costs in carrying out section 1122 of the Act would be a general fund appropriate under the authorization of section 1122(c). Yet no such appropriation exists. Thus, a critical element of the statutory scheme ("The Secretary shall pay * * *" States for their costs of conducting reviews) is lacking. Accordingly, the agreements envisioned by the statute cannot be complied with by the Secretary. Thus, even if a State were willing to continue its participation under section 1122 using solely State funds for its administrative costs, the Department believes that section 1122 no longer contains an adequate basis for the agreements.

For similar reasons, the Department concludes that it would be inappropriate to continue withholding Medicare and Medicaid payments as sanctions for past disapprovals under section 1122 agreements. These reasons are (1) the lack of previously available remedies to modify or challenge a prior disapproval, and (2) the lack of current plans against which to judge a disapproved project that could claim a right to a new review.

The first consideration stems from the regulations that implement section 1122. These regulations provide certain procedural rights to disapproved applicants that would be eliminated by a decision to continue withholding. Under 42 CFR 100.109(c)(1)(iii), a facility that has been subjected to withholding may seek reconsideration of that finding at any time following the later of three years from the date of the finding or three years from the date of the last reconsideration by the designated planning agency. Similarly, under subparagraphs (i) and (ii) of that paragraph, if there has been a substantial change in facilities or services in the area or a substantial change in the need for facilities or services in the area, a reconsideration would be available to the applicant. Given the termination of the agreements with all remaining States and the fact that there are no longer any Title XV State agencies, this process will no longer be available to applicants previously disapproved. Since there is no longer any legally appropriate mechanism to review previously disapproved projects, the Department concludes that all prior sanctions should be terminated effective October 1, 1987.

Moreover, as noted above, there are no longer any current plans against which a proposed expenditure may be judged. Thus, even if a means could be found to afford an applicant a new review, there would be no substantive criteria with which to conduct the review.

Accordingly, beginning October 1, 1987, capital costs associated with previously disapproved projects will not be subject to further Medicare and Medicaid withholding. Any capital costs that are related to a period prior to October 1, 1987 and are associated with a disapproved expenditure may not be allowed.

A State may choose to continue a capital expenditure review program so long as it does not involved Federal participation or Federal funding.

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[1]Probably should be "it is apparent that there is no".

Dated: January 22, 1988.

Robert E. Windom,
Assistant Secretary for Health.
March 8, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Otis R. Bowen,
Secretary.

APPENDIX H

CROSS-REFERENCE TABLE

SOCIAL SECURITY ACT—U.S. CODE

THIS TABLE SHOWS ALL SOCIAL SECURITY ACT SECTION NUMBERS AND THE CORRESPONDING SECTION NUMBERS IN TITLE 42 OF THE UNITED STATES CODE, *EXCEPT* WHERE THE CORRESPONDING 42 U.S. CODE SECTION NUMBER CAN BE ASCERTAINED BY ADDING "200" TO THE SOCIAL SECURITY ACT SECTION.

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1	301
2	302
3	303
4	304
6	306
224	424a
226A	426-1
705	906
706	907
707	908
708	909
709	910
710	911
711	912
1121	1320a
1122	1320a-1
1124	1320a-3
1125	1320a-4
1126	1320a-5
1127	1320a-6
1128	1320a-7
1128A	1320a-7a
1128B	1320a-7b
1131	1320b-1
1132	1320b-2
1133	1320b-3
1134	1320b-4
1135	1320b-5
1136	1320b-6
1137	1320b-7
1138	1320b-8
1139	1320b-9
1140	1320b-10
1141	1320b-11
1151	1320c
1152	1320c-1
1153	1320c-2
1154	1320c-3
1155	1320c-4
1156	1320c-5
1157	1320c-6
1158	1320c-7
1159	1320c-8
1160	1320c-9
1161	1320c-10
1162	1320c-11
1163	1320c-12
1164	1320c-13
1201	1321
1202	1322
1203	1323
1204	1324
1401	1351
1402	1352
1403	1353
1404	1354
1405	1355
1601	1381 note*
1602	1382 note*
1603	1383 note*
1604	1384 note*
1605	1385 note*
1601	1381
1602	1381a
1611	1382
1612	1382a
1613	1382b
1614	1382c
1615	1382d
1616	1382e
1617	1382f
1618	1382g
1619	1382h
1620	1382i
1621	1382j
1631	1383
1632	1383a
1633	1383b
1634	1383c
1701	1391
1702	1392
1703	1393
1704	1394
1801	1395
1802	1395a
1803	1395b
1804	1395b-2

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1811	1395c
1812	1395d
1813	1395e
1814	1395f
1815	1395g
1816	1395h
1817	1395i
1817A	1395i-1a
1818	1395i-2
1819	1395i-3
1831	1395j
1832	1395k
1833	1395l
1834	1395m
1835	1395n
1836	1395o
1837	1395p
1838	1395q
1839	1395r
1840	1395s
1841	1395t
1841A	1395t-1
1841B	1395t-2
1842	1395u
1843	1395v
1844	1395w
1845	1395w-1
1846	1395w-2
1847	1395w-3
1861	1395x
1862	1395y
1863	1395z
1864	1395aa
1865	1395bb
1866	1395cc
1867	1395dd
1869	1395ff
1870	1395gg
1871	1395hh
1872	1395ii
1873	1395jj
1874	1395kk
1875	1395ll
1876	1395mm
1878	1395oo
1879	1395pp
1880	1395qq
1881	1395rr
1882	1395ss
1883	1395tt
1884	1395uu
1885	1395vv
1886	1395ww
1887	1395xx
1888	1395yy
1891	1395bbb
1892	1395ccc
1901	1396
1902	1396a
1903	1396b
1904	1396c
1905	1396d
1907	1396f
1908	1396g
1910	1396i
1911	1396j
1912	1396k
1913	1396l
1914	1396m
1915	1396n
1916	1396o
1917	1396p
1918	1396q
1919	1396r
1920	1396r-1
1921	1396r-2
1922	1396r-3
1923	1396r-4
1924	1396r-5
1925	1396r-6
1926	1396s
2001	1397
2002	1397a
2003	1397b
2004	1397c
2005	1397d
2006	1397e

*P.L. 92-603, §301, amended title XVI to exclude these sections and to substitute the supplemental security income program, and §303 repealed these State-administered title XVI sections, effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a social services program under these provisions if it chooses.

APPENDIX I

LAWS AMENDING THE SOCIAL SECURITY ACT

Public Law	*Approved*	*Short Title of Public Law*
75-722	06-25-38	Railroad Unemployment Insurance Act
76-1	02-10-39	[Internal Revenue Code of 1939][1]
76-36	04-19-39	[State Unemployment Compensation Appropriations]
76-141	06-20-39	[Railroad Unemployment Insurance Act, Amendments]
76-379	08-10-39	Social Security Act Amendments of 1939
78-17	03-24-43	[War Shipping Administration]
78-235	02-25-44[2]	Revenue Act of 1943
78-285	04-04-44	[War Shipping Administration, Amendments]
78-410	07-01-44	Public Health Service Act
78-458	10-03-44	War Mobilization and Reconversion Act of 1944
79-201	10-23-45	[Bonneville Project Act, Amendments]
79-291	12-29-45	[International Organizations Immunities Act]
79-719	08-10-46	Social Security Act Amendments of 1946
80-379	08-06-47	Social Security Act Amendments of 1947
80-492	04-20-48[2]	[Social Security Act Amendments—April 1948]
80-642	06-14-48[2]	[Employment Taxes—Social Security Benefits]
81-174	07-16-49	[Social Security Act—§1302 Extension]
81-439	10-31-49	Agricultural Act of 1949
81-734	08-28-50	Social Security Act Amendments of 1950
81-814	09-23-50	Revenue Act of 1950
82-78	07-12-51	[Agricultural Act of 1949, Amendments]
82-420	06-28-52	[Social Security Act §218(f) Amendments]
82-590	07-18-52	Social Security Act Amendments of 1952
83-269	08-14-53	[Military Service Wage Credits]
83-279	08-15-53	[Wisconsin Retirement Fund]
83-567	08-05-54	Employment Security Administrative Financing Act of 1954
83-761	09-01-54	Social Security Amendments of 1954
83-767	09-01-54	[Unemployment Compensation]
84-325	08-09-55	[Military Wage Credits—pre April 1956]
84-880	08-01-56	Social Security Amendments of 1956
84-881	08-01-56	Servicemen's and Veterans' Survivor Benefits Act
85-109	07-17-57	[Social Security Act—Title II Amendments—1957]
85-226	08-30-57	[Retirement Systems in Certain States]
85-227	08-30-57	[Retirement Systems—State and Local Employees]
85-229	08-30-57	[Social Security Coverage—State and Local Employees]
85-238	08-30-57	[Social Security Act—Title II Amendments—1957]
85-239	08-30-57	[Internal Revenue—SEI—Ministers]
85-786	08-27-58	[Social Security—Wages]
85-787	08-27-58	[Social Security Coverage—Two-part Retirement Systems]
85-798	08-28-58	[Social Security—Title II Amendments—1958]
85-840	08-28-58	Social Security Amendments of 1958
85-848	08-28-58	Ex-Serviceman's Unemployment Compensation Act of 1958
85-857	09-02-58	[Title 38, United States Code, Codification]
85-927	09-06-58	[Social Security Act Amendments—September 1958]
86-70	06-25-59	Alaska Omnibus Act
86-168	08-18-59	Farm Credit Act of 1959
86-284	09-16-59	[Social Security Act—§218(p) Amendment]
86-346	09-22-59	[U.S. Savings Bonds Interest Rates]
86-415	04-08-60	Public Health Service Commissioned Corps Personnel Act of 1960
86-442	04-22-60	[Federal Employees—Unemployment Compensation—Eligibility]

Public Law	*Approved*	*Short Title of Public Law*
86-507	06-11-60	[Authorization for Use of Certified Mail]
86-624	07-12-60	Hawaii Omnibus Act
86-778	09-13-60	Social Security Amendments of 1960
87-6	03-24-61	Temporary Extended Unemployment Compensation Act of 1961
87-31	05-08-61	[Social Security Act Amendments—May 1961]
87-64	06-30-61	Social Security Amendments of 1961
87-256	09-21-61	Mutual Educational and Cultural Exchange Act of 1961
87-293	09-22-61	Peace Corps Act
87-543	07-25-62	Public Welfare Amendments of 1962
87-878	10-24-62	[Social Security Amendments of 1962]
88-31	05-29-63	[Social Security Act—Title IX Amendments]
88-156	10-24-63	Maternal and Child Health and Mental Retardation Planning Amendments of 1963
88-272	02-26-64	Revenue Act of 1964
88-347	06-30-64	[Social Security Act—Title XI Amendment]
88-350	07-02-64	[Retirement Systems—1964 Amendment]
88-382	07-23-64	[Nevada Retirement System]
88-641	10-13-64	[Social Security Act—Title IV Amendments]
88-650	10-13-64	[Social Security Act Amendments—1964]
89-97	07-30-65	Social Security Amendments of 1965
89-368	03-15-66	Tax Adjustment Act of 1966
89-384	04-08-66	[Initial Enrollment Period—Supplementary Medical Insurance Benefits]
89-554	09-06-66	[Enactment of Title 5, United States Code]
89-713	11-02-66	[Social Security Act—§1861(v) Amendment]
90-36	06-29-67	[Requests Under Tariff Schedules—Technical Amendments of 1965]
90-248	01-02-68	Social Security Amendments of 1967
90-364	06-28-68	Revenue and Expenditure Control Act of 1968
90-430	07-26-68	[Employment Security Administration Account—Transfers]
90-486	08-13-68	National Guard Technicians Act of 1968
91-41	07-09-69	[Tariff Schedules—Social Security Act Amendments]
91-53	08-07-69	[Unemployment Security Amendments—1969]
91-56	08-09-69	[Tariff Schedules—Social Security Act—Title XIX Amendments]
91-172	12-30-69	Tax Reform Act of 1969
91-373	08-10-70	Employment Security Amendments of 1970
91-452	10-15-70	Organized Crime Control Act of 1970
91-690	01-12-71	[Social Security Act—§1861(e) Amendment]
92-5	03-17-71	[Public Debt Limit—Social Security Wage Base]
92-40	07-01-71	[Social Security Act—§1113(d) Amendment]
92-223	12-28-71	[Social Security—Lump Sum Death Payment]
92-224	12-29-71	[Social Security Act—§903 Amendments]
92-329	06-30-72	[Emergency Unemployment Compensation Program Extension]
92-336	07-01-72	[Public Debt Limit—Extension]
92-345	07-10-72	[Social Security Act Title V Amendments]
92-512	10-20-72	[Limitation on Grants]
92-603	10-30-72	Social Security Amendments of 1972
93-53	07-01-73	[Public Debt Limit—Temporary Increase]
93-58	07-06-73	[Social Security Act—§226(e) Amendments]
93-66	07-09-73	[Cost-of-Living Increase in Social Security Benefits]
93-107	12-31-74[3]	[Montana Retirement System]
93-233	12-31-73	[Social Security Benefits—Increase]
93-368	08-07-74	[Vessels—Equipment and Repairs—Emergency Unemployment Compensation]
93-406	09-02-74	Employee Retirement Income Security Act of 1974
93-445	10-16-74[3]	[Railroad Retirement System Amendments]
93-480	10-26-74	[Tariffs Schedules—Social Security Act §1862 Amendments]
93-484	10-26-74	[Tariffs—Medicare Appeals]
93-608	01-02-75	[Reports to Congress]

Public Law	*Approved*	*Short Title of Public Law*
93-647	01-04-75	Social Service Amendments of 1974
94-44	06-28-75	[Social Security—Temporary Assistance]
94-48	07-01-75	[Social Security Medicaid]
94-88	08-09-75	[Tariffs—Social Security]
94-120	10-21-75	[Social Security—Title XX Amendments]
94-182	12-31-75	[Social Security—Medicare]
94-202	01-02-76	[Social Security—Hearings and Review Procedures]
94-273	04-21-76	Fiscal Year Adjustment Act
94-331	06-30-76	[Supplemental Security Income]
94-365	07-14-76	[Social Security—Report to Congress]
94-368	07-16-76	[Social Security—Medicare Extension]
94-401	09-07-76	[Social Security—Child Day Care]
94-437	09-30-76	Indian Health Care Improvement Act
94-455	10-04-76	Tax Reform Act of 1976
94-460	10-08-76	Health Maintenance Organization Amendments of 1976
94-552	10-18-76	[Social Security—Medical Assistance]
94-563	10-19-76	[Social Security—Taxes]
94-566	10-20-76	Unemployment Compensation Amendments of 1976
94-569	10-20-76	[Social Security—Presumptively Blind Individuals]
94-585	10-21-76	[Social Security—Food Stamps]
95-30	05-23-77	Tax Reduction and Simplification Act of 1977
95-59	06-30-77	[Smith College—Social Security Act Amendments]
95-83	08-01-77	[Public Health Service Act—Medicaid]
95-142	10-25-77	Medicare-Medicaid Anti-Fraud and Abuse Amendments
95-171	11-12-77	[Social Security Act—Titles IV and XVI Amendments]
95-210	12-13-77	[Social Security—Rural Health Clinic Services]
95-216	12-20-77	Social Security Amendments of 1977
95-292	06-13-78	[Social Security—End Stage Renal Disease Program]
95-472	10-17-78	[Treatment of Group Legal Service Plan Contributions]
95-559	11-01-78	Health Maintenance Organization Amendments of 1978
95-598	11-06-78	[Title 11, U.S.C.—Bankruptcy—Child Support]
95-600	11-06-78	Revenue Act of 1978
95-626	11-10-78	Health Services and Centers Amendments of 1978
96-32	07-10-79	[Public Health Service Act and Other Laws—Technical Amendments]
96-79	10-04-79	Health Planning and Resources Development Amendments of 1979
96-178	01-02-80	[Social Security Act Titles IV and XX Amendments]
96-222	04-01-80	Technical Corrections Act of 1979
96-249	05-26-80	Food Stamp Act Amendments of 1980
96-265	06-09-80	Social Security Disability Amendments of 1980
96-272	06-17-80	Adoption Assistance and Child Welfare Act of 1980
96-398	10-07-80	Mental Health Systems Act
96-403	10-09-80	[Social Security Tax Receipts—Allocation]
96-473	10-19-80	[Social Security Act Retirement Test Amendments]
96-499	12-05-80	Omnibus Reconciliation Act of 1980
96-611	12-28-80	[Social Security Act Titles IV, XVI and XVIII Amendment]
97-34	08-13-81	Economic Recovery Tax Act of 1981
97-35	08-13-81	Omnibus Budget Reconciliation Act of 1981
97-123	12-29-81	[Amendments to P.L. 97-35]
97-248	09-03-82	Tax Equity and Fiscal Responsibility Act of 1982
97-300	10-13-82	Job Training Partnership Act
97-375	12-21-82	Congressional Reports Elimination Act of 1982

Public Law	*Approved*	*Short Title of Public Law*
97-377	12-21-82	[Further Continuing Appropriations for Fiscal Year 1983]
97-424	01-06-83	Surface Transportation Assistance Act of 1982
97-448	01-12-83	Technical Corrections Act of 1982
97-455	01-12-83	[Temporary Payment of Disability Benefits]
98-21	04-20-83	Social Security Amendments of 1983
98-76	08-12-83	Railroad Retirement Solvency Act of 1983
98-90	08-29-83	[Social Security Act—Title XVIII Amendments—1983]
98-118	10-11-83	[Extension of "Federal Supplemental Compensation Act of 1982," P.L. 97-248, Title VI, Subtitle A]
98-135	10-24-83	Federal Supplemental Compensation Amendments of 1983
98-369	07-18-84	Deficit Reduction Act of 1984
98-378	08-16-84	Child Support Enforcement Amendments of 1984
98-396	08-22-84	Second Supplemental Appropriations Act, 1984
98-460	10-09-84	Social Security Disability Benefits Reform Act of 1984
98-617	11-08-84	[Social Security Act Titles IV, XVIII and XIX Amendments]
98-620	11-08-84	[Title IV—Federal Courts Improvements]
99-53	06-17-85	[Federal Employee Health Benefits Program Eligibility]
99-177	12-12-85	[Public Debt Limit Increase]
99-190	12-19-85	[Continuing Appropriations for Fiscal Year 1986]
99-198	12-23-85	Food Security Act of 1985
99-221	12-26-85	Cherokee Leasing Act
99-272	04-07-86	Consolidated Omnibus Budget Reconciliation Act of 1985
99-335	06-06-86	Federal Employees' Retirement System Act of 1986
99-349	07-02-86	Urgent Supplemental Appropriations Act, 1986
99-500	10-18-86	[Appropriations—Fiscal Year 1987]
99-509	10-21-86	Omnibus Budget Reconciliation Act of 1986
99-514	10-22-86	Tax Reform Act of 1986
99-570	10-27-86	Anti-Drug Abuse Act of 1986
99-576	10-28-86	Veterans' Benefits Improvement and Health-Care Authorization Act of 1986
99-591	10-30-86	[Continuing Appropriations—Fiscal Year 1987]
99-603	11-06-86	Immigration Reform and Control Act of 1986
99-643	11-10-86	Employment Opportunities for Disabled Americans Act
100-93	08-18-87	Medicare and Medicaid Patient and Program Protection Act of 1987
100-203	12-22-87	Omnibus Budget Reconciliation Act of 1987
100-300	04-29-88	International Child Abduction Remedies Act
100-360	07-01-88	Medicare Catastrophic Coverage Act of 1988
100-364	07-11-88	WIN Demonstration Program Extension Act of 1988
100-485	10-13-88	Family Support Act of 1988
100-628	11-07-88	Stewart B. McKinney Homeless Assistance Amendments Act of 1988
100-647	11-10-88	Technical and Miscellaneous Revenue Act of 1988
100-690	11-18-88	Anti-Drug Abuse Act of 1988
100-707	11-23-88	[Amendments to the Disaster Relief Act of 1974]

[1]Information within [ ] is supplied.
[2]Passed over veto.
[3]Private law.

APPENDIX J

NORTHERN MARIANA ISLANDS[1]

P.L. 94-241, Approved March 24, 1976 (90 Stat. 263)[2]

[48 U.S.C. 1681 note]

JOINT RESOLUTION

To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America"[3], and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947[4]; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

"Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

"Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

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[1]Background: The Northern Mariana Islands consist of 21 small islands, six of which are inhabited and 14 of which are large enough to be identified by name. Together with Guam, a U.S. territory, they form a western Pacific entity known as the Mariana Islands. The Marianas archipelago is one of three making up the Trust Territory of the Pacific Islands, a United Nations trusteeship under United States administration; the other two are the Carolines and the Marshall Islands. Saipan, Tinian and Rota, in that order, are the three largest islands of the Northern Marianas and most of the archipelago's 14,500 population lives on one or the other.

[2]See P.L. 95-134, §§403 and 501, in this Appendix, p. 967. See P.L. 95-348, §3(b) and (c) in this Appendix, p. 968.

[3]Presidential Proclamation 5564 dated November 3, 1986 published in the Federal Register on November 7, 1986 (51 FR 40399) placed this Covenant into full force and effect. (in this Appendix, p. 972)

[4]61 Stat. 3301.

"Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination."

* * * * * * *

"ARTICLE IV

"JUDICIAL AUTHORITY

* * * * * * *

"SECTION 403. * * *

(b) Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

"ARTICLE V

"APPLICABILITY OF LAWS

"SECTION 501. (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States.

"(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

"SECTION 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands

except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

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"SECTION 606. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the 'Northern Mariana Islands Social Security Retirement Fund'. This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable.

"(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

"(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

"(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

"(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate Federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

"(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

* * * * * * *

"ARTICLE X

"APPROVAL, EFFECTIVE DATES, AND DEFINITIONS[*]

"SECTION 1001. (a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

"(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

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[*]See Presidential Proclamation 4534, dated October 24, 1977, published in the Federal Register on October 27, 1977 (43 FR 56593), in this Appendix, p. 970.

"SECTION 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States.*

"SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

"(a) Sections 105, 201-203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

"(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

"(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

"SECTION 1004. (a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

"(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffective until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

"SECTION 1005. As used in this Covenant:

"(a) 'Trusteeship Agreement' means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;

"(b) 'Northern Mariana Islands' means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14° north latitude, south of 21° north latitude, west of 150° east longitude and east of 144° east longitude;

"(c) 'Government of the Northern Mariana Islands' includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

"(d) 'Territory or possession' with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

"(e) 'Domicile' means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

"Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975."

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SEC. 2. It is the sense of the Congress that pursuant to section 902 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.

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*See Presidential Proclamation 5564 dated November 3, 1986, published in the Federal Register on November 7, 1986 (51 FR 40399), in this Appendix, p. 972.

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[*Internal References.*—Social Security Act titles I, IV, X, XIV, XVI (State), XVI and §228 have footnotes referring to P.L. 94-241. P.L. 95-348, §3(b); P.L. 98-213, §§18, 23, and 24; and Proclamations 4534, 5207 and 5564 (this Appendix) cite P.L. 94-241.]

P.L. 95-134, Approved October 15, 1977 (91 Stat. 1159)
[Authorization for Appropriations—Insular Areas][1]

* * * * * * *

SEC. 403. [48 U.S.C. 1681 note] Effective on the date when section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by joint resolution approved on March 24, 1976 (90 Stat. 263) goes into force those laws which are referred to in section 502(a)(1) of said Covenant, except for any laws administered by the Social Security Administration, except for medicaid which is now administered by the Health Care Financing Administration, and except the Micronesian Claims Act of 1971 (85 Stat. 96) shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Northern Mariana Islands.[2]

TITLE V

SEC. 501. [48 U.S.C. 1469a] In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as "Insular Areas") it is hereby declared to be the policy of the Congress, notwithstanding any provision of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any insular area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to such department or agency with respect to each such consolidated grant: *Provided,* That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, shall (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant. Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under $200,000 (including in-kind contributions) required by law to be provided by American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands.

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[1] See P.L. 95-348, §8, in this Appendix, p. 968.
[2] Covenant §502 became effective 11 A.M. of January 9, 1978, Northern Mariana Islands local time. See Presidential Proclamation 4534, signed October 24, 1977, in this Appendix p. 970.

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[*Internal References.*—P.L. 94-241, title, has a footnote referring to P.L. 95-134. P.L. 95-348, §§3(b)(1) and 8 cite P.L. 95-134.]

P.L. 95-348, Approved August 18, 1978 (92 Stat. 487)
[Northern Mariana Islands]

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SEC. 3.

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(b) [None assigned.] (1) The government of the Northern Marianas in carrying out the purposes of this Act, Public Law 95-134[1], or Public Law 94-241[2], may utilize, to the extent practicable, the available services and facilities of agencies and instrumentalities of the Federal Government on a reimbursable basis. Such amounts may be credited to the appropriation or fund which provided the services and facilities. Agencies and instrumentalities of the Federal Government may, when practicable, make available to the government of the Northern Marianas, upon request of the Secretary, such services and facilities as they are equipped to render or furnish, and they may do so without reimbursement if otherwise authorized by law.

(2) Any funds made available to the Northern Mariana Islands under grant-in-aid programs by section 502 of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (Public Law 94-241[3]), or pursuant to any other Act of Congress enacted after March 24, 1976, are hereby authorized to remain available until expended.

(3) Any amount authorized by the Covenant described in paragraph (2) or by any other Act of Congress enacted after March 24, 1976, which authorizes appropriations for the Northern Mariana Islands, but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

(c) [48 U.S.C. 1681 note] Notwithstanding the provisions of the Food Stamp Act of 1977[4], the Secretary of Agriculture is authorized, upon the request of the Governor of the Northern Mariana Islands, acting pursuant to legislation enacted in accordance with sections 5 and 7 of article II of the Constitution of the Northern Mariana Islands, and for the period during which such legislation is effective, (1) to implement a food stamp program in part or all of the Northern Mariana Islands with such income and household standards of eligibility, deductions, and allotment values as the Secretary determines, after consultation with the Governor, to be suited to the economic and social circumstances of such islands: *Provided*, That in no event shall such income standards of eligibility exceed those in the forty-eight contiguous States, and (2) to distribute or permit a distribution of federally donated foods in any part of the Northern Mariana Islands for which the Governor has not requested that the food stamp program be implemented. This authority shall remain in effect through September 30, 1981, and shall not apply to section 403 of Public Law 95-135.

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AUTHORIZATIONS TO REMAIN AVAILABLE

SEC. 8. [None assigned.] Any amount authorized by this Act or by the Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (Public Law 95-134; 91 Stat. 1159[5]) but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

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[*Internal References.*—P.L. 94-241 and P.L. 95-134 have footnotes referring to P.L. 95-348.]

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[1] See P.L. 95-134, in this Appendix, p. 967.
[2] See P.L. 94-241, in this Appendix, p. 963.
[3] See footnote 2.
[4] See Food Stamp Act of 1977 (P.L. 88-525), (in Vol. II, p. 490).
[5] See P.L. 95-134, this Appendix, p. 967.

P.L. 98-213, Approved December 8, 1983 (97 Stat. 1459)
[Insular Affairs]

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SEC. 17. [48 U.S.C. 1681 note] No provision of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall bar the United States of America from paying compensation to or employing any citizen of the Northern Mariana Islands.

SEC. 18. [48 U.S.C. 1681 note] No requirement of United States citizenship in any Federal law which provides Federal services or financial assistance and which is applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant or, if enacted subsequent to March 24, 1976, by its own terms shall bar a citizen of the Northern Mariana Islands from receiving services or assistance pursuant to such law.

SEC. 19. [48 U.S.C. 1681 note] (a) The President may, subject to the provisions of section 20 of this Act, by proclamation provide that the requirement of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands. The President is authorized to correct clerical errors in the list, and to add to it provisions, where it appears from the context that they were inadvertently omitted from the list.

(b) A statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors shall, for the purposes of this Act, be considered to impose a requirement of United States citizenship or nationality.

SEC. 20. [48 U.S.C. 1681 note] (a) The President may issue one or more proclamations under the authority of this Act.

(b) When issuing such proclamation or proclamations the President—

(1) shall take into account:

(i) the hardship suffered by the citizens of the Northern Mariana Islands resulting from the fact that, while they are subject to most of the laws of the United States, they are denied the benefit of those laws which contain a requirement of United States citizenship or nationality;

(ii) the responsibilities, obligations, and limitations imposed upon the United States by international law;

(2) may make the requirement of United States citizenship or nationality inapplicable only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States;

(3) may make the requirement of a United States citizenship or nationality inapplicable only in the Northern Mariana Islands;

(4) may retain the requirement of United States citizenship or nationality with respect to parts of a statute or portion thereof.

SEC. 21. [48 U.S.C. 1681 note] If the President does not issue any proclamation authorized by section 19 of this Act within a period of six months following the effective date of the Act, the requirement of United States citizenship or nationality as a prerequisite of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant shall not be applicable to citizens of the Northern Mariana Islands: *Provided*, That the provisions of this section shall not be applicable to any requirements of United States citizenship or nationality contained in statutes relating to the political rights of citizenship, and to the diplomatic protection of, and services to, citizens or nationals of the United States in foreign countries: *Provided further*, That with respect to the statutes relating to the uniformed services, the requirement of United States citizenship or nationality shall remain in effect, except with respect to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States.

SEC. 22. [48 U.S.C. 1681 note] Nothing in this Act shall be construed as extending to the Northern Mariana Islands any statutory provision or regulation not otherwise applicable to or within the Northern Mariana Islands, in particular the statutes relating to immigration and nationality and the regulations issued under them.

SEC. 23. [48 U.S.C. 1681 note] The authority of the President to issue proclamations under section 19 of this Act shall terminate upon the establishment of the Common-

wealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant. Section 21 of this Act shall not become effective if the Commonwealth of the Northern Mariana Islands is established within the period of six months following the effective date of this Act.

SEC. 24. [48 U.S.C. 1681 note] As used in this Act:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or

(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

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[*Internal Reference.*—Proclamation 5207 cites sections 19 and 20 of P.L. 98-213.]

Proclamation 4534 October 24, 1977

Constitution of the Northern Mariana Islands

By the President of the United States of America

A Proclamation[1]

On February 15, 1975, the Marianas Political Status Commission, the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States signed a Covenant, the purpose of which is to provide for the eventual establishment of a Commonwealth of the Northern Mariana Islands in political union with the United States of America. This Covenant was subsequently approved by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands voting in a plebiscite. The Covenant was approved by the Congress of the United States by joint resolution approved March 24, 1976 (Public Law 94-241; 90 Stat. 263).

In accordance with the provisions of Article II of the Covenant, the people of the Northern Mariana Islands have formulated and approved a Constitution which was submitted to me on behalf of the Government of the United States on April 21, 1977, for approval on the basis of its consistency with the Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. Pursuant to the provisions of Section 202 of the Covenant, the Constitution of the Northern Mariana Islands will be deemed to have been approved by the Government of the United States six months after the date of submission to the President unless sooner approved or disapproved.

The six-month period of Section 202 of the Covenant having expired on October 22, 1977, I am pleased to announce that the Constitution of the Northern Mariana Islands is hereby deemed approved.

I am satisfied that the Constitution of the Northern Mariana Islands complies with the requirements of Article II of the Covenant. I have also received advice from the Senate Committee on Energy and Natural Resources and the Subcommittee on National Parks and Insular Affairs of the House Committee on Interior and Insular Affairs that the Constitution complies with those requirements.

Sections 1003(b) and 1004(b) of the Covenant provide that the Constitution of the Northern Mariana Islands and the provisions specified in Section 1003(b) of the Covenant shall become effective on a date proclaimed by the President which will be not more than 180 days after the Covenant and the Constitution of the Northern Mariana Islands have both been approved.

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[1]Published at 42 FR 56593, October 27, 1977 and 48 U.S.C. 1681 note.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim as follows:

SECTION 1. The Constitution of the Northern Mariana Islands shall come into full force and effect at eleven o'clock on the morning of January 9, 1978, Northern Mariana Islands local time.

SEC. 2. Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 of the Covenant shall come into full force and effect on the date and at the time specified in Section 1 of this Proclamation.

SEC. 3. The authority of the President under Section 1004 of the Covenant to suspend the application of any provision of law to or in the Northern Mariana Islands until the termination of the Trusteeship Agreement is hereby reserved.

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[Internal References.—P.L. 94-241, §1 (§1001 catchline) and P.L. 95-134, §403, have footnotes referring to Proclamation 4534.]

Proclamation 5207 of June 7, 1984

Application of Certain Laws of the United States to Citizens of the Northern Mariana Islands

By the President of the United States of America

A Proclamation

The Northern Mariana Islands, as part of the Trust Territory of the Pacific Islands, are administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations (61 Stat. 3301). The United States has undertaken to promote the political development of the Trust Territory toward self-government or independence and to protect the rights and fundamental freedoms of its peoples.

The United States and the Northern Mariana Islands have entered into a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241; 90 Stat. 263; 48 U.S.C. 1681, note[1]) pursuant to which many provisions of the laws of the United States became applicable to the Northern Mariana Islands as of January 9, 1978 (Proclamation No. 4534, Section 2).

Sections 19 and 20 of Public Law 98-213 (97 Stat. 1464)[2] authorize the President, subject to certain limitations, to provide by proclamation that requirements "of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by sections 19 and 20 of Public Law 98-213, do hereby proclaim as follows:

* * * * * * *

3. *Statutes relating to protection and services in foreign countries.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

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(f) Section 1113 of the Act of August 14, 1935, c.531, as added by section 302 of Public Law 87-64, 75 Stat. 142, and as amended (42 U.S.C. 1313).

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6. *Statutes relating to Federal programs and benefits.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

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[1]See this Appendix, p. 963.
[2]See this Appendix, p. 969.

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(i) Subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935, c.531, 49 Stat. 620, 622, as amended (42 U.S.C. 302(b)(3) and 304);

(j) Subsection (t) of section 202 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 118 of the Act of August 1, 1956, c.836, 70 Stat. 835, and as amended (42 U.S.C. 402(t));

(k) Subsection (a)(4) of section 103 of Public Law 89-97, 79 Stat. 333, as amended (42 U.S.C. 426a(a)(4));

(l) Subsection (a)(3) of section 228 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 302 of Public Law 89-368, 80 Stat. 67, as amended (42 U.S.C. 428(a)(3));

(m) Subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935, c.531, 49 Stat. 646, as amended (42 U.S.C. 1202(b)(2) and 1204);

(n) Subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935, c.531, as added by section 351 of the Act of August 28, 1950, c.809, 64 Stat. 555 (42 U.S.C. 1352(b)(2) and 1354);

* * * * * * *

7. As used in this Proclamation:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or
(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

(d) "Statute which imposes a requirement of United States citizenship or nationality" includes any statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors.

8. Upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant, the benefits acquired under this Proclamation shall merge without interruption into those to which the recipient is entitled by virtue of his acquisition of United States citizenship, unless the recipient exercises his privilege under section 302 of the Covenant to become a national but not a citizen of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

Published at 49 FR 24365, June 13, 1984 and 48 U.S.C. 1681 note.

Title 3— Proclamation 5564 of November 3, 1986

The President

Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands

By the President of the United States of America

A Proclamation[1]

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94-241 of March 24, 1976, 90 Stat. 263.[2] Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public Law 99-239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

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[1] 51 FR 40399, November 7, 1986 and 48 U.S.C. 1681 note.
[2] See P.L. 94-241, this Appendix, p. 963.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the Authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 (Public Law 99-239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

Sec. 3. (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

APPENDIX K

TOTALIZATION AGREEMENTS

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence. . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."[1]

[1]The Totalization Agreements between the United States and Belgium, Canada, Norway, Sweden, and the United Kingdom of Great Britain and Northern Ireland have not yet been published in Treaties and Other International Acts. The material included in this Appendix consists of pertinent parts from House Documents relating to these Agreements.

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND CANADA

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TREATIES AND OTHER INTERNATIONAL ACTS SERIES 10863[1]

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Agreement signed at Ottawa March 11, 1981
And administrative arrangement
Signed at Washington May 22, 1981;
Supplementary agreement signed at Ottawa May 10, 1983;
Understanding and administrative agreement with the Government of Quebec
Signed at Quebec March 30, 1983;
Entered into force August 1, 1984.

AGREEMENT

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND

THE GOVERNMENT OF CANADA,

RESOLVED TO CO-OPERATE IN THE FIELD OF SOCIAL SECURITY, HAVE DECIDED TO CONCLUDE AN AGREEMENT FOR THIS PURPOSE,

AND,

HAVE AGREED AS FOLLOWS:

PART I

GENERAL PROVISIONS

Article I

For the purpose of this Agreement:

(1) "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Canada, the territory of Canada;

(2) "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended[2], and as regards Canada, a citizen of Canada;

(3) "Laws" means the laws and regulations specified in Article II;

(4) "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and "as regards Canada, the Minister or Ministers of the Crown responsible for the administration of the laws specified in Article II(1)(b);

(5) "Agency" means, as regards the United States, the Social Security Administration, and "as regards Canada, for all matters other than those related to contributions: the Department of National Health and Welfare; for matters related to contributions: the Department of National Revenue-Taxation;

(6) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage;

(7) "Benefit" means any benefit provided for in the laws of either Contracting State;

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[1]This text is a copy of a Department of State publication as amended by Supplementary Agreement dated May 10, 1983. TIAS 10863 is the finding aid comparable to a citation to the United States Code.
[2]66 Stat. 163; 8 U.S.C. §1101.

(8) "Stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;[3]

(9) "Refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951,[4] and the Protocol to that Convention dated January 31, 1967.[5]

Article II

(1) For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,[6] and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;[7]

(b) As regards Canada:

(i) the Old Age Security Act and regulations made thereunder, and

(ii) the Canada Pension Plan and regulations made thereunder.

(2) Unless otherwise provided in this Agreement, the applicable laws referred to in paragraph (1) of this Article do not include treaties or other agreements concluded between either Contracting State and a third State and laws or regulations promulgated for their implementation.

(3) This Agreement shall also apply to future laws amending the laws specified in paragraph (1) of this Article.

(4) Provincial social security legislation may be dealt with in understandings as specified in Article XX.

Article III[8]

Unless otherwise provided, this Agreement shall apply to:

(a) nationals of either Contracting State,

(b) refugees,

(c) stateless persons,

(d) other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article IV

(1) Unless otherwise provided in this Agreement, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment, with respect to the payment of benefits, with the nationals of that Contracting State.

(2) Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.

(3) Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article III who reside in the territory of the other Contracting State.

(4) As regards the laws of Canada, paragraph (1) of this Article is extended to persons designated in Article III(e).

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[3] 360 UNTS 130.
[4] 189 UNTS 152.
[5] TIAS 6577; 19 UST 6225.
[6] 49 Stat.622; 42 U.S.C. §402.
[7] 68A Stat. 353, 415; 26 U.S.C. §1401, §3121.
[8] As in original. Probably should be italicized.

PART II

PROVISIONS ON COVERAGE

Article V

(1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Contracting States shall, in respect of that work, be subject to the laws of only that Contracting State.

(2)(a) Where an employed person is covered under the laws of one of the Contracting States in respect of work performed for an employer having a place of business in the territory of that Contracting State and is then required by that employer to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State in respect of that work, as if it were performed in the territory of the first Contracting State. The preceding sentence shall apply provided that the period of work in the territory of the other Contracting State does not exceed 60 months.

(b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Contracting State for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Contracting States, subparagraph (a) shall also apply:

(i) where the employer does not have a place of business in the territory of the first Contracting State, or

(ii) where the period of work in the other Contracting State exceeds or is expected to exceed 60 months.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963,* unless such persons have waived their immunities and privileges with respect to the payment of social security contributions.

(4)(a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Contracting States.

(b) Where a person employed in the Government service of one of the Contracting States is covered under the laws of both Contracting States in respect of that employment, the following rules shall apply:

(i) A person in the Government service of one Contracting State who is sent to work within the territory of the other Contracting State shall be subject to the laws of only the first Contracting State in respect of that service;

(ii) A person hired locally to work in the Government service of one Contracting State within the territory of the other Contracting State shall be subject to the laws of only the other Contracting State in respect of that service.

(c) For the purposes of this paragraph, "Government service" means,

(i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;

(ii) as regards Canada, service in the employ of the Government of Canada or a Province of Canada or a Canadian municipality.

(5) Where, but for this Article, a person would be covered under United States laws as well as under the Canada Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Canada Pension Plan if that person is a resident of Canada, and only to United States laws in any other case.

(6) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Canada if that person is considered to be resident in Canada for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.

(7) Where, but for this Article, a person would be covered under the laws of both Contracting States in respect of an activity that is considered to be self-employment by one of the Contracting States and employment by the other Contracting State, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Contracting State and according to the provisions of this Article respecting employment in any other case.

(8) Where, by virtue of this Article, a person would be subject to the laws of Canada but coverage is not effected under those laws, the person shall be subject to United States laws.

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*TIAS 7502, 6820; 23 UST 3227; 21 UST 77; respectively.

(9) The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.

(10) Where a person covered under the laws of a Contracting State in accordance with this Agreement is also covered under the laws of the other Contracting State or a third State in accordance with the provisions of an agreement between a Contracting State and a third State, the Competent Authorities of the two Contracting States may agree to exclude the person from the application of this Agreement.

(11) The Competent Authorities of the two Contracting States may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.

(12) The application of this Article shall be subject to such rules as the Competent Authorities of the two Contracting States may prescribe through arrangements made pursuant to Article XII(a) of this Agreement.

Article VI

(1) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to the laws of Canada, or the comprehensive pension plan of a province, during any period of residence in the territory of the United States, that period of residence, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period, shall be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

(2) Any calendar quarter during which a spouse or a dependant of a person referred to in Article V(2) is credited with a period of coverage under United States laws shall not be counted as residence in Canada for the purposes of the Old Age Security Act.

(3) Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to United States laws during any period of residence in the territory of Canada, that period, in respect of that person, his spouse and dependants who reside with him and who are not employed or self-employed during that period shall not be treated as residence in Canada for the purposes of the Old Age Security Act.

(4) Except as otherwise provided in this Article, periods during which the spouse or dependant referred to in paragraph (3) of this Article is contributing to the Canada Pension Plan or the comprehensive pension plan of a province as a result of employment or self-employment shall be treated as periods of residence in Canada for the purposes of the Old Age Security Act.

(5) Except as otherwise provided in this Article, any person who resides in the United States, is employed in Canada and is subject to the Canada Pension Plan or the comprehensive pension plan of a province shall be credited with one year of residence under the Old Age Security Act for each year of contributions under the Canada Pension Plan or the comprehensive pension plan of a province.

(6) If a person referred to in paragraph (4) or (5) of this Article performs services which are covered as employment or self-employment under United States laws and simultaneously performs other services which are covered as employment or self-employment under the Canada Pension Plan or a comprehensive pension plan of a province, that period of employment or self-employment shall not be treated as a period of residence for the purposes of the Old Age Security Act.

PART III

Provisions on Benefits

Chapter 1
Provisions Applicable to the United States

Article VII

(1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Canada Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Canada Pension Plan certified as creditable by the agency of Canada; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

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(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.[10]

(4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

CHAPTER 2

PROVISIONS APPLICABLE TO CANADA

Article VIII

(1) In this Article, "pension" means a monthly pension under Part I of the Old Age Security Act.

(2)(a) If a person is entitled to a pension under paragraph 3(1)(a) or (b) of the Act, the totalization provisions of subparagraphs (3)(a) and (b) of this Article may be used, if necessary, to accumulate the required 20 years of residence in Canada for payment of a pension in the United States. Only a partial pension calculated in accordance with the Act may be paid.

(b) If a person is entitled to a partial pension under subsection 3(1.1) of the Act, that pension may be paid in the United States if the periods totalized according to subparagraphs (3)(a) and (b) of this Article equal not less than 20 years.

(3)(a) If a person is not entitled to a pension under the Old Age Security Act because of insufficient periods of residence, entitlement to a pension may be determined by totalizing periods of residence in Canada on or after January 1, 1952 and after the attainment of age 18, and periods of coverage under United States laws as specified in subparagraph (3)(b) of this Article, but where the periods coincide, only one period shall be counted.

(b) For the purposes of establishing entitlement to a pension by means of totalization, a quarter of coverage under United States laws on or after January 1, 1952 and after the attainment of age 18, shall be counted as three months of residence in Canada.

(c) The agency of Canada shall calculate the amount of the pro-rated pension at the rate of 1/40th of the full pension for each year of residence in Canada which is recognized as such in subparagraph (3)(a) of this Article or deemed as such under Article VI of this Agreement.

(4) If the total duration of the periods of residence completed in Canada in accordance with subparagraph (3)(a) of this Article or Article VI of this Agreement is less than one year, the agency of Canada shall not pay a pension in respect of those periods.

Article IX

(1) In this Article, "spouse's allowance" means a partial spouse's allowance under Part II.1 of the Old Age Security Act.

(2) If a person is not entitled to a spouse's allowance under the Act because of insufficient periods of residence, entitlement to a spouse's allowance may be determined by totalizing periods of residence in accordance with subparagraph (3)(a) of Article VIII and periods of coverage under United States laws in accordance with subparagraph (3)(b) of Article VIII, but where the periods coincide, only one period shall be counted.

Article X

Article IV of this Agreement does not affect the provisions of the Old Age Security Act governing the payment of the guaranteed income supplement and the spouse's allowance to persons not resident in Canada.

Article XI

(1) In this Article, "benefit" means,

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[10]For amendment of Art. VII (3), see Supplementary Agreement of May 10, 1983, *infra*.

(a) an orphan's benefit or a disabled contributor's child's benefit,
(b) a death benefit,
(c) a disability pension, or
(d) a survivor's pension payable under the Canada Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Canada Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Contracting States in accordance with paragraph (3) of this Article, to the extent that they do not coincide.

(3)(a) Subject to the provisions governing the contributory period under the Canada Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under United States laws shall be deemed to be a year in which contributions were made under the Canada Pension Plan.

(b) The agency of Canada shall calculate the earnings-related portion of the benefit directly and exclusively on the basis of the periods of coverage completed under the Canada Pension Plan.

(c) The amount of the flat-rate benefit under the Canada Pension Plan is the amount obtained by multiplying:

(i) the amount of the flat-rate benefit determined under the provisions of the Canada Pension Plan; by

(ii) the ratio that the periods of coverage under the Canada Pension Plan represent in relation to the total of the periods of coverage under the Canada Pension Plan and of only those periods of coverage under United States laws required to satisfy the minimum requirements for entitlement under the Canada Pension Plan.

PART IV

Miscellaneous Provisions

Article XII

The Competent Authorities of the two Contracting States shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article XIII

The Competent Authorities and agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement.

Article XIV

(1) Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XV

(1) The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official languages of either Contracting State.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in an official language of the other Contracting State.

Article XVI

(1) A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant: (a) requests that it be considered an application under the laws of the other Contracting State; or (b) in the absence of a request that it not be so considered, provides information at the time of application indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

(2) An application for benefits under the laws of one Contracting State which is filed with the agency of the other Contracting State in accordance with paragraph (1) of this Article, shall be adjudicated by the agency of the first Contracting State under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

(4) The provisions of Part III of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article XVII

(1) A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting State. The appeal shall be dealt with according to the appeal procedure of the laws of the Contracting State whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same prescribed period with the agency of the other Contracting State, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Contracting State.

Article XVIII

Unless disclosure is required under the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State is confidential and shall be used exclusively for the purposes of implementing this Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

PART V

Transitional and Final Provisions

Article XIX

(1) No provision of this Agreement shall confer any right

(a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement, or

(b) to receive a lump-sum death benefit if the person died before the entry into force of the Agreement.

(2) In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Agreement, except that neither Contracting State shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

(4) This Agreement shall not result in the reduction of benefit amounts because of its entry into force.

(5) The period of work referred to in the last sentence of Article V(2)(a) shall be measured beginning on or after the date on which this Agreement enters into force.

Article XX

The Competent Authority of the United States and the authorities of the provinces of Canada may conclude understandings concerning any social security legislation within the provincial jurisdiction insofar as those understandings are not inconsistent with the provisions of this Agreement.

Article XXI

(1) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

(2) If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article XXII

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.[11]

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Ottawa this 11th day of March 1981, in the English and French languages, each version being equally authentic.

For the Government of the United States of America:
(signed) ALEXANDER M. HAIG.
For the Government of Canada:
(signed) MARK MACGUIGAN.
Monique Begin.

ADMINISTRATIVE ARRANGEMENT

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA, CONCLUDED ON MARCH 11, 1981

In conformity with Article XII(a) of the Agreement on Social Security between the Government of the United States of America and the Government of Canada, entered into on March 11, 1981, and hereinafter referred to as "the Agreement", the competent authorities:

—For the United States of America:
RICHARD S. SCHWEIKER,
Secretary of Health and Human Services.

—For Canada:
Madame MONIQUE BEGIN,
Minister of National Health and Welfare.

have agreed on the following provisions:

CHAPTER 1

GENERAL PROVISIONS

Paragraph 1

The following are designated as liaison agencies for the purposes of administering the Agreement and this Administrative Arrangement:
For the United States,
the Social Security Administration, and
For Canada,
Income Security Programs,
Department of National Health and Welfare.

[11] Aug. 1, 1984.

Paragraph 2

Terms used in this Administrative Arrangement have the same meaning as in the Agreement.

Paragraph 3

The agencies of the Contracting States will agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

CHAPTER 2

PROVISIONS ON COVERAGE

Paragraph 4

1. Where the laws of a Contracting State are applicable in accordance with Article V of the Agreement, the agency of that Contracting State will issue, in accordance with rules and procedures to be agreed upon by the agencies of the two Contracting States and at the request of an employer, employee or self-employed person, a certificate stating that the concerned employee or group of employees or self-employed person is covered by those laws. The certificate will be evidence that the employee, group of employees or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in subparagraph 4.1 will be issued
—In the United States: By the Social Security Administration; and
—In Canada: By the Accounting and Collections Division, Department of National Revenue-Taxation.

CHAPTER 3

PROVISIONS ON BENEFITS

Paragraph 5

1. The liaison agency of the Contracting State with which an application for benefits is first filed in accordance with Article XVI of the Agreement will inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It will also transmit documents and such other available information as may be necessary for the liaison agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part III of the Agreement. In the case of an application for disability benefits, it will, in particular, transmit relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Contracting State which receives an application filed with the liaison agency of the other Contracting State will, without delay, provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The liaison agency of the Contracting State with which an application for benefits has been filed will verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified will be agreed upon by the liaison agencies.

Paragraph 6[12]

1. In the application of Article VII of the Agreement, the Canadian liaison agency will notify the United States liaison agency of the years in which a person is credited with coverage under the Canada Pension Plan along with such other information as may be necessary to determine the amount of the person's benefit.

2. Benefits awarded by the liaison agency of the United States under Article VII of the Agreement will be recomputed in accordance with United States laws to take account of additional periods of coverage completed under the laws of either Contracting State. An application for such a recomputation will be required only where the additional periods of coverage have been completed under Canadian laws.

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[12]For deletion of Paragraph 6.2 and 6.3, see Supplementary Agreement of May 10, 1983, *infra*.

3. Periods of coverage completed after the last computation base year provided under United States laws will not be considered in determining the ratio referred to in Article VII(3) of the Agreement.

Paragraph 7

In the application of Chapter 2 of Part III of the Agreement, the United States liaison agency will notify the Canadian liaison agency of the periods of coverage which a person has completed under United States laws, along with such other information as may be necessary to determine the amount of the person's benefit.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Paragraph 8

In accordance with measures to be agreed upon pursuant to Paragraph 3 of this Administrative Arrangement, the liaison agency of one Contracting State will, upon request of the liaison agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Paragraph 9

The liaison agencies of the two Contracting States will exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data will include the number of beneficiaries and the total amount of benefits, by type of benefit.

Paragraph 10

This Administrative Arrangement will take effect on the date of entry into force of the Agreement[13] and will have the same period of duration.

Done in duplicate at Washington, this 22nd day of May 1981, in English and French, both texts being equally authentic.

For the Government of the United States of America:
(Signed) RICHARD S. SCHWEIKER.

For the Government of Canada:
(Signed) MONIGUE BEGIN.

SUPPLEMENTARY AGREEMENT

SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA WITH RESPECT TO SOCIAL SECURITY

The Government of the United States of America and the Government of Canada,

Having considered the Agreement on Social Security between the United States of America and Canada, signed March 11, 1981, (hereinafter referred to as the "Agreement") and the Administrative Arrangement for the Implementation of the Agreement, signed on May 22, 1981, (hereinafter referred to as the "Administrative Arrangement"), and

Having recognized the need to improve the manner of determining the rights to benefits under the Agreement,

Have agreed as follows:

ARTICLE I

Paragraph (3) of Article VII of the Agreement shall be deleted and replaced by the following new paragraph:

"(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the

[13] Aug. 1, 1984.

United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of the person's periods of coverage credited under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount."

ARTICLE II

Paragraphs 6.2 and 6.3 of the Administrative Arrangement shall be deleted and Paragraph 6.1 shall be redesignated as Paragraph 6.

ARTICLE III

This Supplementary Agreement shall enter into force on the date of entry into force of the Agreement[14] and shall have the same period of validity.

In witness whereof, the undersigned, duly authorized to that effect, have signed this Supplementary Agreement.

Done in duplicate at Ottawa, this 10th day of May 1983 in the English and French languages, each version being equally authentic.

For the Government of the United States of America:

(Signed)
PAUL ROBINSON.

For the Government of Canada:

(Signed)
MONIQUE BEGIN.

UNDERSTANDING

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF QUEBEC

Resolved to cooperate in the field of social security,

Desirous of concluding an Understanding to facilitate the application of a mutually beneficial arrangement in this field,

In view of the Social Security Agreement between Canada and the United States signed on March 11, 1981,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article I

For the purpose of this Understanding:

(1) "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Quebec, the territory of Quebec;

(2) "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Quebec, a citizen of Canada residing in Quebec or, if not residing therein, who is subject or has been subject to the laws specified in Article II(1)(b);

(3) "Laws" means, the laws and regulations specified in Article II;

(4) "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards Quebec, the Minister or Ministers responsible for the application or the administration of the laws specified in Article II(1)(b);

(5) "Agency" means, as regards the United States, the Social Security Administration, and as regards Quebec, for matters related to the collection of contribu-

[14] Aug. 1, 1984.

tions, the Ministere du Revenu du Quebec; for all other matters, the Regie des rentes du Quebec;

(6) "Period of coverage" means, a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(7) "Benefit" means, any benefit provided for in the laws of either Party;

(8) "Stateless person" means, a person defined as a stateless person in Article I of the Convention Relating to the Status of Stateless Persons dated September 28, 1954;

(9) "Refugee" means, a person defined as a refugee in Article I of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

Article II

(1) For the purpose of this Understanding, the applicable laws are:

(a) as regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and

(ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters;

(b) as regards Quebec: The Act concerning the Quebec Pension Plan.

(2) Unless otherwise provided in this Understanding, the applicable laws referred to in paragraph (1) of this Article do not include undertakings entered into by the United States or Quebec with third parties, or laws and regulations promulgated for the implementation of such undertakings.

(3) This Understanding shall also apply to laws amending the laws specified in paragraph (1) of this Article and to agreements between the Government of Quebec and the Government of Canada concluded for purposes of coordinating their respective pension plans.

Article III

Unless otherwise provided, this Understanding shall apply to:

(a) Nationals,

(b) Refugees,

(c) Stateless persons,

(d) Other persons with respect to the rights they derive from a national, a refugee, or a stateless person, and

(e) Nationals of a third party not included among the persons mentioned in paragraph (d) of this Article.

Article IV

(1) Unless otherwise provided in this Understanding, the persons designated in Article III (a), (b), (c) or (d) who reside in the territory of either Party shall, in the application of the laws of a Party, receive equal treatment, with respect to the payment of benefits, with the nationals of that Party.

(2) Nationals of a Party who reside outside the territories of both Parties shall receive benefits provided by the laws of the other Party under the same conditions which the other Party applies to its own nationals who reside outside the territories of both Parties.

(3) Unless otherwise provided in this Understanding, the laws of a Party under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Party shall not be applicable to the persons designated in Article III who reside in the territory of the other Party.

(4) As regards the laws of Quebec, paragraph (1) of this Article is extended to persons designated in Article III(e).

PART II

Provisions on Coverage

Article V

(1) Except as otherwise provided in this Article, an employed person who works in the territory of one of the Parties shall, in respect of that work, be subject to the laws of only that Party.

(2)(a) Where an employed person is subject to the laws of one of the Parties in respect to work performed for an employer having a place of business in the territory of that Party and is then required by that employer to work in the territory of the other Party, the person shall be subject to the laws of only the first Party in respect of that work, as if it were performed in the territory of the first Party. The preceding sentence shall apply provided that the period of work in the territory of the other Party does not exceed 60 months.

(b) For the purpose of subparagraph (a), where a person is required to work in the territory of the other Party for intermittent periods of short duration, each such period shall be considered a separate period of work.

(c) With the prior mutual consent of the Competent Authorities of the Parties, subparagraph (a) shall also apply:

(i) where the employer does not have a place of business in the territory of the first Party, or

(ii) where the period of work in the other Party exceeds or is expected to exceed 60 months.

(3) This Article shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963, unless the immunities and privileges with respect to the payment of Social Security contributions of such persons have been waived, or such persons are among the persons mentioned in subparagraph (4)(b)(ii) of this Article.

(4)(a) Except as provided in subparagraph (b), this Article shall not apply to a person employed in the Government service of one of the Parties.

(b) Where a person is employed in the Government service of one of the Parties, the following rules shall apply:

(i) a person in the Government service of one Party who is sent to work within the territory of the other Party shall be subject to the laws of only the first Party in respect to that service;

(ii) a person hired locally to work for the United States Govenment in Quebec shall be subject to the laws of Quebec unless the person is a national of the United States or, since before entry into force of the Understanding, participated in the Civil Service Retirement System of the United States or other United States Government-financed pension plan and has elected not to participate in the Quebec Pension Plan.

(c) For the purposes of this paragraph, "Government service" means,

(i) as regards the United States, service in the employ of the Government of the United States or any instrumentality thereof;

(ii) as regards Quebec, service in the employ of the Government of Quebec.

(5) Where, but for this Article, a person would be covered under United States laws as well as under the Act concerning the Quebec Pension Plan in respect of employment as an officer or member of the crew on a ship or aircraft, that person shall, in respect of that employment, be subject only to the Act concerning the Quebec Pension Plan if that person is a resident of Quebec or contributes to the Quebec Pension Plan while residing elsewhere in Canada, and only to United States laws in any other case.

(6) Where, but for the Article, a person would be covered under the laws of both Parties in respect of earnings from self-employment, that person shall, in respect thereof, be subject only to the laws of Quebec if that person is considered to be resident in Quebec for the purposes of the relevant provisions of those laws, and only to United States laws in any other case.

(7) Where, but for this Article, a person would be covered under the laws of both Parties in respect of an activity that is considered to be self-employment by one of the Parties and employment by the other Party, that activity shall be treated according to the provisions of this Article respecting self-employment if the person is a resident of the first Party and according to the provisions of this Article respecting employment in any other case.

(8) Where, by virtue of this Article, a person would be subject to the laws of Quebec but coverage is not effected under those laws, the person shall be subject to United States laws.

(9) The Understanding shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article V(1) shall apply when Article V(2) is not applicable as a result of the preceding sentence.

(10) Where a person covered under the laws of a Party in accordance with this Understanding is also covered under the laws of the other Party or a third Party in accordance with the provisions of an undertaking entered into by the United States or by Quebec with a third Party, the Competent Authorities of the two Parties may agree to exclude the person from the application of this Understanding.

(11) The Competent Authorities of the two Parties may, by common agreement, make exceptions in the application of this Article in respect of any person or category of persons.

PART III

Provisions on Benefits

Chapter 1

PROVISIONS APPLICABLE TO THE UNITED STATES

Article VI

(1) Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under the Act concerning the Quebec Pension Plan shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

(2) In determining eligibility for benefits under paragraph (1) of this Article, the agency of the United States shall credit four quarters of coverage for every year of contributions under the Act concerning the Quebec Pension Plan certified as creditable by the agency of Quebec; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(3) Where entitlement to a benefit under United States laws is established according to the provisions of paragraph (1) of this Article, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on the duration of a worker's periods of coverage completed under United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

(4) Entitlement to a benefit from the United States which results from paragraph (1) of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph (1) of this Article.

Chapter 2

Provisions Applicable to Quebec

Article VII

(1) In this Article, "benefit" means,

(a) a retirement pension,

(b) an orphan's benefit or a disabled contributor's child's benefit,

(c) a death benefit,

(d) a disability pension, or

(e) a survivor's pension

payable under the Act concerning the Quebec Pension Plan.

(2) If a person is not entitled to a benefit because of insufficient periods of coverage under the Quebec Pension Plan, entitlement to the benefit may be determined by totalizing periods of coverage under the laws of both Parties in accordance with paragraph (3) of this Article, to the extent that they do not coincide.

(3) Subject to the provisions governing the contributory period under the Act concerning the Quebec Pension Plan, to establish entitlement to a benefit by means of totalization, a year in which at least one quarter of coverage is credited under the laws of the United States shall be deemed to be a year in which contributions were made under the Act concerning the Quebec Pension Plan.

(4) The agency of Quebec shall calculate the benefit payable under the provisions of paragraph (2) preceding in the following manner:

(a) Compute the amount of the earnings-related benefit under the Act concerning the Quebec Pension Plan;

(b) Add to this benefit, the amount of the flat rate benefit under the Act concerning the Quebec Pension Plan adjusted by the ratio that the periods of coverage under the Act concerning the Quebec Pension Plan represent in relation to the contributory period, subject to the provisions governing such period under the Act concerning the Quebec Pension Plan.

PART IV

Miscellaneous Provisions

Article VIII

The Competent Authorities of the two Parties shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Understanding;

(b) Communicate to each other information concerning the measures taken for the application of this Understanding; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Understanding.

Article IX

The Competent Authorities and agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Understanding.

Article X

(1) Where the laws of a Party provide that any document which is submitted to the Competent Authority or an agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Party in accordance with its laws.

(2) Copies of documents which are certified as true and exact copies by the agency of one Party shall be accepted as true and exact copies by the agency of the other Party, without further certification. The agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article XI

Benefits shall be payable without any deductions for administrative costs, transfer fees or any other expenses incurred for the payment of such benefits.

Article XII

(1) The Competent Authorities and agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Understanding. The correspondence may be in the official languages of either Party.

(2) No application or document may be rejected by a Competent Authority or an agency solely on the grounds that it is written in the official language of the other Party.

Article XIII

(1) A written application for benefits filed with an agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant

(a) requests that it be considered an application under the laws of the other Party, or

(b) provides information, at the time of application, indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Party.

(2) An application for benefits under the laws of one Party, which is filed with the agency of the other Party in accordance with paragraph (1) of this Article, shall be adjudicated by the agency of the first Party under the applicable provisions of its laws.

(3) An applicant may request that an application filed with an agency of one Party be effective on a different date in the other Party within the limitations of and in conformity with the laws of the other Party.

(4) The provisions of Part III of this Understanding shall apply only to an application for benefits which is filed on or after the date this Understanding enters into force.

Article XIV

(1) A written appeal of a determination made by the agency of one Party may be validly filed with an agency of either Party. The appeal shall be dealt with according to the appeal procedure of the laws of the Party whose decision is being appealed.

(2) Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the agency of that Party, but which is instead filed within the same prescribed period with the agency of the other Party, shall be considered to be filed on time and shall be forthwith transmitted to the agency of the first Party.

Article XV

Unless disclosure is required under the statutes of a Party, information about an individual which is transmitted, in accordance with the Understanding, to that Party by the other Party is confidential and shall be used exclusively for the purposes of implementing this Understanding. Such information received by a Party shall be governed by the statutes of that Party for the protection of privacy and confidentiality of personal data.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article XVI

(1) No provision of this Understanding shall confer any right

(a) to receive a pension, allowance or benefit for a period before the date of the entry into force of the Understanding, or

(b) to receive a lump-sum death benefit if the person died before the entry into force of the Understanding.

(2) In the implementation of this Understanding, consideration shall also be given to periods of coverage and other events relevant to rights under the laws occurring before the entry into force of this Understanding, except that neither Party shall take into account periods of coverage occurring prior to the effective date of its laws.

(3) Determinations made before the entry into force of this Understanding shall not affect rights arising under it.

(4) This Understanding shall not result in the reduction of the amounts of benefits already established because of its entry into force.

(5) The period of work referred to in the last sentence of Article V(2)(a) shall be measured beginning on or after the date on which this Understanding enters into force.

Article XVII

(1) This Understanding shall remain in force and effect until the first of the following dates:

December 31 of the calendar year following the year in which written notice of its denunciation is given by one of the Parties to the other Party;

or the date the Social Security Agreement between Canada and the United States signed on March 11, 1981 ceases to remain in force and effect.

(2) If this Understanding is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Parties shall make arrangements dealing with rights in the process of being acquired.

Article XVIII

This Understanding shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Understanding.[15]

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[15] Aug. 1, 1984.

In witness whereof, the undersigned representatives of the Parties being duly authorized thereto, have signed the present Understanding.

Done at Quebec on March 30, 1983 in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the United States of America

(Signed) GEORGE W. JAEGER.

For the Government of Quebec

(Signed) JACQUES-YVAN MORIN.

ADMINISTRATIVE ARRANGEMENT

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF QUEBEC ON SOCIAL SECURITY

In conformity with Article VIII(a) of the Understanding between the Government of the United States of America and the Government of Quebec on Social Security of this date, hereinafter referred to as "The Understanding", the following provisions have been agreed upon:

CHAPTER 1

GENERAL PROVISIONS

Article 1

The following are designated as liaison agencies for the purposes of administering the Understanding and this Arrangement:

For the United States,
The Social Security Administration, and

For Quebec,
Le Secretariat de l'administration des Ententes de securite sociale

Article 2

Terms used in this Administrative Arrangement will have the same meaning as in the Understanding.

Article 3

The agencies of the Parties will agree upon joint procedures and forms necessary for the implementation of the Understanding and this Administrative Arrangement.

CHAPTER 2

PROVISIONS ON COVERAGE

Article 4

(1) Where the laws of a Party are applicable in accordance with Article V of the Understanding, the agency of that Party will issue, in accordance with procedures to be agreed upon and at the request of the employer, employee, or self-employed person, a certificate stating that the concerned employee, or self-employed person, is covered by those laws. The certificate will be evidence that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Party.

(2) The certificate referred to in Paragraph (1) of this article will be issued:

(i) In the United States: By the Social Security Administration

(ii) In Quebec: By the Ministere du Revenu du Quebec.

CHAPTER 3

PROVISIONS ON BENEFITS

Article 5

(1) The liaison agency of the Party with which an application for benefits is first filed in accordance with Article XIII of the Understanding will inform the liaison agency of the other Party of this fact without delay, using forms established for this purpose. It will also transmit documents and such other available information as may be necessary for the liaison agency of the other Party to establish the right of the applicant to benefits according to the provisions of Part III of the Understanding. In the case of an application for disability benefits, it will, in particular, transmit relevant medical evidence in its possession concerning the disability of the applicant.

(2) The liaison agency of a Party which receives an application filed with the liaison agency of the other Party will, without delay, provide the liaison agency of the other Party with such evidence and other available information as may be required to complete action on the claim.

(3) The liaison agency of the Party with which an application for benefits has been filed will verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified will be agreed upon by the liaison agencies.

(4) Certification by a liaison agency of information pertaining to civil status or vital statistics exempts the transmission of the probative documents to the other agency. The first agency shall furnish those documents or certified copies thereof which may be obtained upon request of the other agency.

Article 6

In the application of Article VI of the Understanding, the Quebec liaison agency will notify the United States liaison agency of the years in which a person is credited with coverage under the Act concerning the Quebec Pension Plan along with such other information as may be necessary to determine the amount of the person's benefit.

Article 7

In the application of Chapter 2 of Part III of the Understanding, the United States liaison agency will notify the Quebec liaison agency of the periods of coverage which a person has completed under United States laws, along with such other information as may be necessary to determine the amount of the person's benefit.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Article 8

In accordance with measures to be agreed upon pursuant to Article 3 of this Administrative Arrangement, the liaison agency of one Party will, upon request of the liaison agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Understanding.

Article 9

Where administrative assistance is requested under the Understanding, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed in accordance with procedures to be agreed upon by the agencies.

Article 10

The liaison agencies of the two Parties will exchange statistics on the payments made to beneficiaries under the Understanding for each calendar year in a form to be agreed upon. The data will include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 11

This Administrative Arrangement will take effect on the date of entry into force of the Understanding and will have the same period of duration.

Done at Quebec on March 30, 1983 in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the United States of America
(Signed) GEORGE W. JAEGER.

For the Government of Quebec
(Signed) JACQUES-YVAN MORIN.

The Government of the United States of America

and

The Government of the French Republic,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

For purposes of this Agreement:

1. "Territory of a Contracting State" means,
   as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa; and
   as regards France, the European and Overseas Departments of the French Republic;
2. "National" means,
   as regards the United States, a national of the United States as defined in section 101, Immigration and Nationality Act of 1952, as amended; and
   as regards France, a person of French nationality;
3. "Laws" means the laws and regulations specified in Article 2;
4. "Competent Authority" means,
   as regards the United States, the Secretary of Health and Human Services; and
   as regards France, the Ministers responsible for implementation of the laws specified in Article 2, paragraph 1.b, each to the extent of his responsibility;
5. "Agency" means,
   as regards the United States, the Social Security Administration; and
   as regards France, the institution or agency responsible for applying in whole or in part the laws specified in Article 2, paragraph 1.b;
6. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment ("activitë non salariëe"), as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
7. "Benefit" means any contributory benefit in cash or in kind provided for in the laws of either Contracting State;
8. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954;
9. "Refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967;
10. Any term not defined in this Article shall have the meaning assigned to it in the laws which are being applied.

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   a. As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
      (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections; and
      (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
   b. As regards France,
      (i) laws establishing the administative organization of social security programs;
      (ii) laws establishing the social insurance system for nonagricultural employees and laws establishing the social insurance system for agricultural employees;
      (iii) laws on prevention and compensation of occupational accidents and illnesses; laws on nonoccupational accident insurance and insurance against occupational accidents and illnesses for self-employed persons in agricultural occupations;

(iv) laws on family benefits;

(v) laws concerning special social security systems to the extent they relate to the risks or benefits covered by the laws enumerated in the preceding clauses, but excluding the special system for civil servants;

(vi) the law on the system for seamen;

(vii) laws concerning sickness and maternity insurance for nonagricultural self-employed workers and laws concerning sickness and maternity insurance for agricultural self-employed workers;

(viii) laws concerning old-age allowances and old-age insurance for nonagricultural self-employed workers, laws concerning old-age and invalidity insurance for clergymen and members of religious orders, laws concerning old-age and invalidity insurance for attorneys, and laws concerning old-age insurance for agricultural self-employed workers.

2. Notwithstanding paragraph 1.b(ii) and (vii) of this Article, this Agreement shall not apply to provisions of French laws which extend to French nationals who work or have worked outside French territory the right to enroll in voluntary insurance.

3. This Agreement shall also apply to legislation which amends or supplements the laws specified in paragraph 1; however, it shall apply to future legislation of a Contracting State which creates new categories of beneficiaries only if the Competent Authority of that Contracting State does not notify the Competent Authority of the other Contracting State in writing within three months of the date of the official publication of the new legislation that no such extension of the Agreement is intended.

4. Unless otherwise provided in this Agreement, laws within the meaning of paragraph 1 shall not include Regulations on Social Security implementing the Treaties establishing the European Communities or treaties or other international agreements which may be in force between either Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

Article 3

Unless otherwise provided, this Agreement shall apply to

(a) persons who are or have been subject to the laws of either Contracting State and who are nationals of either Contracting State, refugees or stateless persons and

(b) other persons with respect to the rights they derive from the persons mentioned in paragraph (a).

Article 4

A national of a Contracting State who resides within the territory of the other Contracting State and to whom the provisions of this Agreement apply shall, together with his dependents, receive equal treatment with the nationals of the other Contracting State in the application of the laws of the other State regarding entitlement to and payment of benefits.

PART II

Provisions on Coverage

Article 5

1. Unless otherwise provided in this Agreement, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State, even if the person resides in the territory of the other Contracting State or the place of business of the person's employer is in the territory of the other Contracting State.

2. Unless otherwise provided in this Agreement, a person employed on a vessel which flies the flag of a Contracting State who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the State whose flag the vessel flies. For the purpose of this paragraph, a vessel which flies the flag of the United States is an "American vessel" within the meaning of United States laws.

Article 6

1. Where an employed person who is covered under the laws of one Contracting State with respect to work performed for an employer in the territory of that Contracting State is sent by that employer to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting

State as if he were employed in its territory, provided that the period of work in the territory of the other Contracting State is not expected to exceed 5 years.

2. Article 5, paragraph 2, shall not apply in the case of a person who is employed in the territorial waters or in a port of a Contracting State on a vessel flying the flag of the other Contracting State, if the person is not ordinarily employed at sea and is not a crew member. In such cases, Article 5, paragraph 1, or Article 6, paragraph 1, shall apply as appropriate.

3. Paragraph 1 shall apply in the case of an employed person who has been sent by his employer from the territory of a Contracting State to the territory of a third state and subsequently sent by that employer from the territory of the third state to the territory of the other Contracting State, only if the employed person is a national of a Contracting State.

4. A person who is employed in a public or private international air transport enterprise of one of the Contracting States as a member of the travelling personnel and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State where the enterprise is headquartered.

Article 7

1. A person who is self-employed in the territory of one Contracting State shall be subject to the laws of only that Contracting State even if he resides in the territory of the other Contracting State.

2. A person who is normally self-employed in the territory of one Contracting State and who performs self-employment for a temporary period in the territory of the other Contracting State shall be subject to the laws of only the first Contracting State, provided that the period of self-employment in the territory of the other Contracting State is not expected to exceed 24 months.

3. Except as provided in paragraph 4, a person normally self-employed in the territory of both Contracting States shall be subject to the laws of only the Contracting State in whose territory the person performs his principal activity.

4. A person who is engaged in agricultural self-employment in the territory of one of the Contracting States and who is also employed or self-employed in the territory of the other Contracting State shall be subject, with respect to the agricultural self-employment, only to the laws of the Contracting State in whose territory it is performed.

Article 8

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting States in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first Contracting State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof and employment by the French Government means employment in the service of the French Government or an instrumentality ("organisme dépendant") of the French Government performed in the territory of the United States by employees or civil servants or military personnel or persons treated as such.

Article 9

The Competent Authorities of the two Contracting States may agree to grant exceptions to the provisions of this Part in the interest of any person or category of persons, provided that the affected person shall be subject to the laws of one of the Contracting States.

Article 10

Except as provided in Article 6, paragraph 3, the provisions of Articles 5, 6, 7 and 9 shall apply to persons regardless of their nationality who would otherwise be covered under the laws of both Contracting States.

PART III

Provisions on Old-age, Survivors and Invalidity Benefits

Chapter 1

General Provisions

Article 11

1. Except as otherwise provided in this Agreement, any provision of United States laws which restricts, suspends or terminates entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of the United States shall not be applicable to persons who reside in the territory of France.

2. Except as otherwise provided in this Agreement, benefits provided under French laws shall not be subject to any restriction on entitlement or any reduction, modification, suspension, termination, or forfeiture solely because the person described in Article 3 resides in the territory of the United States.

Chapter 2

Provisions Applicable to the United States

Article 12

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under French laws and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every calendar quarter credited under French laws, except that no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. When entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall first compute a theoretical primary insurance amount in accordance with United States laws (including, as appropriate, the provisions of those laws on indexing of earnings) as if the worker had completed a coverage lifetime as determined in accordance with United States laws at the same earnings level as is credited to the worker during the periods of coverage actually completed under those laws. The agency of the United States shall then compute a pro rata primary insurance amount by applying to the theoretical primary insurance amount the ratio of the duration of the worker's periods of coverage credited under United States laws to the duration of a coverage lifetime. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

5. The provisions of this Article and Article 11, paragraph 1, shall apply to persons without regard to their nationality.

Chapter 3

Provisions Applicable to France

Article 13

1. Nationals of either of the Contracting States, refugees and stateless persons who have been subject successively or alternately to one or several social insurance systems in each of the Contracting States shall receive benefits under French laws as provided in this Article.

2. Except as provided in paragraph 3, when the individual has sufficient coverage to satisfy the requirements of French laws for entitlement to an old-age, survivor, or invalidity pension without the necessity of referring to the periods of coverage completed under United States laws, the French agency shall determine the amount of the pension according to the provisions of French laws, taking into account only the periods of coverage completed under French laws.

3. (a) Notwithstanding paragraph 2, when an individual who qualifies for an invalidity pension under French laws is also entitled to a disability benefit under United States laws, the French agency shall determine the amount of the invalidity pension it pays according to the provisions of paragraph 4.b(ii) and (iii).

(b) If the amount of the invalidity pension computed exclusively according to French laws without recourse to this Agreement would be greater than the total amount of the benefits payable by the agencies of both Contracting States in accordance with the provisions of this Agreement, the French agency shall pay the benefit amount computed in accordance with the provisions of paragraph 4.b(ii) and (iii) increased by the difference between the amount of the invalidity pension computed exclusively according to French laws and such total amount.

4. When the individual does not have sufficient coverage to satisfy the requirements for a French old-age, survivor or invalidity pension, the benefit which the individual may claim from the French agency shall be awarded according to the following rules:

a. Totalization of periods of coverage

The agency of France shall take account of periods of coverage credited under the laws of the United States to the extent that they do not coincide with periods of coverage credited under French laws, both for purposes of determining the right to benefits as well as the maintenance or recovery of this right.

b. Award of the benefit

(i) Taking account of the totalization of periods as provided in subparagraph a., the French agency shall determine, according to its own laws, if the applicant meets the requirements for entitlement to an old-age, survivor or invalidity pension under its laws.

(ii) If the applicant is eligible for a pension, the French agency shall determine the benefit to which the insured would have been entitled if all the periods of coverage and equivalent periods had been completed exclusively under its own laws. When the amount of the pension is based on the average salary during all or part of the period of coverage, the average salary shall be determined on the basis of the period of coverage completed under French laws.

(iii) The benefit payable to the beneficiary shall be determined by reducing the amount of the benefit referred to in (ii) above to a pro rata amount based on the ratio of (A) the duration of periods of coverage and equivalent periods acquired under French laws to (B) the total periods completed under the laws of the two Contracting States. The total referred to in (B) shall be limited to the number of quarters of coverage required to qualify for a full old-age pension under French laws.

5. If a person no longer has a right to a French invalidity pension because he is not covered under French laws, the French agency shall award an invalidity pension in accordance with the provisions of paragraph 4 (a) and (b) above, provided that the person has completed at least 6 quarters of coverage under United States laws or is eligible for Social Security benefits under United States laws.

Article 14

If the sum of the periods of coverage completed under French laws is less than one year, the French agency shall not be required to award benefits on the basis of the said periods unless a right to benefits is acquired under French laws solely on the basis of these periods. In this case, the benefit shall be awarded only on the basis of these periods.

Article 15

Nationals of either Contracting State shall be entitled to enroll in voluntary insurance provided by French Social Security laws when they reside in French territory, taking into account as appropriate periods of coverage or equivalent periods completed under United States laws.

Article 16

Benefits based on periods of coverage completed under French laws shall be paid to nationals of a third state with which France has a Social Security convention if they reside in the territory of the United States.

Article 17

1. Where French laws award certain benefits only on the condition that the periods of coverage were completed in a profession covered by a special system or in a specified profession or employment, the periods acquired under United States laws shall be taken into account in determining eligibility for these benefits only if they were acquired in the same profession or employment.

2. If, taking account of the periods thus acquired, the individual does not meet the requirements for entitlement to the said benefits, these periods shall be taken into account for the award of benefits under the general system, without taking into account their special nature.

3. Notwithstanding the provisions of Article 11, paragraph 2:

(a) The special allowance and cumulative indemnity provided by the special French laws for mine workers shall be payable only to individuals who work in French mines.

(b) The allowances for dependent children provided by the special French laws for mine workers shall be paid according to the conditions specified therein.

(c) The occupational invalidity pension provided by the special laws applicable to mine workers in France shall be paid to insured individuals who are subject to these special laws at the moment the accident or sickness which led to the invalidity occurred if the individuals resided in France until the date of award of the said pension. The pension shall be discontinued for pensioners who resume work outside of France.

Article 18

The provisions of the present chapter are applicable, by analogy, to the rights of surviving spouses and children.

PART IV

Miscellaneous Provisions

Article 19

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement.

2. The Competent Authorities of the two Contracting States shall:

(a) Conclude an Administrative Arrangement and make such other arrangements as may be necessary for the application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

3. Liaison agencies for the implementation of this Agreement shall be designated in the Administrative Arrangement.

Article 20

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in an official language of the other Contracting State.

3. Exemptions from or reductions in taxes or stamp, registration, or enrollment fees provided by the laws of one of the Contracting States for evidence or documents which must be presented in application of the laws of that State shall be extended to the corresponding evidence or documents to be presented to the social security authorities or agencies of the other State in application of this Agreement.

4. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication or legalization by diplomatic or consular authorities.

5. Copies of documents which are certified as true and exact copies by an agency of one Contracting State shall be accepted as true and exact copies by an agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 21

1. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

2. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.

3. If an applicant has filed a written application for benefits with the agency of one Contracting State and has not specifically restricted the application to benefits under the laws of that State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

Article 22

An application, appeal, or other document which according to the laws of a Contracting State must be submitted to an agency of that Contracting State within a specified period shall be considered to have been submitted on time if it is submitted within the same period to an agency of the other Contracting State. In such case, the agency to which the application, appeal, or document has been submitted shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

Article 23

1. Payments under this Agreement may be made in the currency of the Contracting State making the payment.

2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately decide on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 24

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by the Competent Authorities of the Contracting States.

2. If any such disagreement has not been resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

Article 25

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 26

This Agreement shall not affect provisions of French laws concerning the participation of non-nationals in the organizations necessary for the operation of the Social Security systems.

PART V

Transitional and Final Provisions

Article 27

1. This Agreement shall not establish any claim to benefits for any period before its entry into force or to a lump-sum death benefit under United States laws if the person died before its entry into force.

2. Periods of coverage completed before the entry into force of this Agreement shall be taken into account in order to determine the right to benefits under this Agreement, except that neither Contracting State shall be required to take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be credited under its laws.

3. This Agreement shall apply to events which occurred prior to its entry into force insofar as those events are relevant to rights under the laws specified in Article 2.

4. This Agreement shall not result in the reduction of any cash benefit to which entitlement existed prior to its entry into force.

5. (a) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

(b) Any benefit which was denied or suspended under the domestic law of either Contracting State but which is payable by virtue of this Agreement shall, upon application of the person concerned, be awarded or reinstated upon entry into force of the Agreement, provided that the right to such benefit has not been settled by a lump-sum payment.

(c) Benefit rights which a person acquired prior to the entry into force of this Agreement may be reviewed upon application of the person concerned taking into account the provisions of this Agreement.

6. In applying Article 6, paragraph 1, or Article 7, paragraph 2, in the case of persons who began a period of work in the territory of a Contracting State prior to the effective date of this Agreement, the period of work or self-employment referred to in those two paragraphs shall be considered to begin on that effective date.

Article 28

1. The Governments of both Contracting States shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement.

2. This Agreement shall enter into force on the first day of the third month following the date of the last notification.

Article 29

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Paris on March 2, 1987, in duplicate in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Joe M. Rodgers
Ambassador Extraordinary
and Plenipotentiary

FOR THE GOVERNMENT OF
THE FRENCH REPUBLIC:

Philippe Sëguin
Minister of Social
Affairs and Employment

ADMINISTRATIVE ARRANGEMENT CONCERNING THE APPLICATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE UNITED STATES OF AMERICA

AND

THE FRENCH REPUBLIC

Pursuant to the provisions of Article 19, paragraph 2(a), of the Agreement between the United States of America and the French Republic on Social Security, signed March 2, 1987, hereinafter referred to as the "Agreement", the Competent Authorities of the two Contracting States have agreed on the following provisions for application of the Agreement:

PART I

General Provisions

ARTICLE 1

Terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

ARTICLE 2

1. Pursuant to Article 19, paragraph 3, of the Agreement, the liaison agencies designated by the Competent Authorities of the two Contracting States shall be:

(a) For the United States of America:

—the Social Security Administration;

(b) For France:

—the Center for Social Security of Migrant Workers (Centre de la Securite Sociale des Travailleurs Migrants);

—the National Independent Social Security Fund for Miners (Caisse Autonome Nationale de la Securite Sociale dans les Mines) with respect to coverage and invalidity and old-age benefits and death allowances under the social security system for mine workers.

2. The United States Social Security Administration and the French Competent Authorities shall agree upon joint procedures and forms necessary for the application of the Agreement and this Administrative Arrangement.

PART II

Provisions on Coverage

ARTICLE 3

1. In applying Part II of the Agreement,

(a) where the laws of a Contracting State continue to be applicable in accordance with Article 6, paragraph 1, or Article 7, paragraph 2, of the Agreement, the agency of that Contracting State designated in paragraph 3 shall issue, upon request of the employer or self-employed person, a certificate stating that, for the duration of the mission, the employee or self-employed person remains covered by those laws with respect to the work in question;

(b) in all other cases where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State designated in paragraph 3 shall issue, upon request of the employer or self-employed person, a certificate stating that the employee or self-employed person is subject to the laws of that Contracting State;

(c) the certificates referred to in subparagraphs (a) and (b) shall exempt the named worker from the laws on compulsory coverage of the other Contracting State.

2. In the case of a person who has been sent from the United States to France in accordance with Article 6, paragraph 1, or Article 7, paragraph 2, of the Agreement, the United States agency shall only issue a certificate under paragraph 1 of this Article if the employer or self-employed person has certified that the employee in the first case, or the self-employed person in the second case, is covered under a program which insures the person and the family members who accompany him against the cost of health care.

If the employee or self-employed person is not covered under such a program, the person concerned shall be subject to French laws and exempt from United States laws in accordance with Article 5 or Article 7, paragraph 1, of the Agreement.

3. The certificates referred to in paragraph 1 shall be issued:

(a) In the United States of America by:

—the Social Security Administration;

(b) In France by:

—the Primary Sickness Insurance Fund (Caisse Primaire d'Assurance Maladie) for persons covered under the general social security system,

—the agency responsible for administering a particular special social security system for persons covered under that system,

—the agency designated by the Regional Mutual Benefit Funds (Caisses Mutuelles Regionales) with respect to self-employed persons,

—the National Independent Social Security Fund for Miners (Caisse Autonome Nationale de Securite Sociale dans les Mines) for persons covered under the social security system for mine workers,

—the Agricultural Social Insurance Mutual Benefit Fund (Caisse de Mutualite Sociale Agricole) for persons covered under the agricultural social security system,

—the National Establishment for Disabled Seafarers (Etablissement National des Invalides de la Marine) for persons covered under the social security system for seafarers.

4. The agency of a Contracting State which issues the certificates referred to in paragraph 1 shall furnish a copy of these certificates to the liaison agency of the other Contracting State.

ARTICLE 4

1. If an agency of a Contracting State has issued a certificate referred to in Article 3, paragraph 1 (a), of this Administrative Arrangement with respect to a worker for a period of work in the territory of the other Contracting State to which the person was sent in accordance with Article 6, paragraph 1, of the Agreement, and the worker subsequently begins a new period of work in the territory of the other Contracting State, the worker shall not be entitled to a certificate with respect to the new period unless

(1) the new period of work begins at least 1 year after the end of the initial period of work or

(2) the new period of work is not expected to last beyond 5 years from the date on which the initial period of work began.

2. If an agency of a Contracting State has issued a certificate referred to in Article 3, paragraph 1 (a), of this Administrative Arrangement with respect to a worker for a temporary period of self-employment performed in the territory of the other Contracting State in accordance with Article 7, paragraph 2, of the Agreement, and the worker subsequently begins a new period of self-employment in the territory of the other Contracting State, the worker shall not be entitled to a certificate with respect to the new period unless

(1) the new period of self-employment begins at least 1 year after the end of the initial period of self-employment or

(2) the new period of self-employment is not expected to last beyond 24 months from the date on which the initial period of self-employment began.

ARTICLE 5

1. For purposes of Article 7, paragraph 3, of the Agreement, a self-employed person shall be considered to perform his principal activity in the territory of the Contracting State in which he maintains a fixed base for more than 183 days during the fiscal year concerned.

If the person maintains a fixed base in the territory of both Contracting States or of neither Contracting State for more than 183 days in such year, he shall be considered to perform his principal activity in the territory of the Contracting State in which he is present for the greater number of days in such year.

Where difficulties arise, the agencies shall furnish each other with all information necessary to determine the principal activity of the person concerned.

2. If self-employment is covered under the laws of a Contracting State in accordance with Article 7, paragraph 3, of the Agreement, the amount of income from self-employment that is creditable for benefit computation purposes and the amount of contributions that are due under those laws shall be based on the income derived from self-employment performed in the territory of both Contracting States. The contribution rate to be applied in determining the amount of contributions due shall be that which applies under those laws.

ARTICLE 6

To establish eligibility for voluntary or continued optional coverage under the French social security system as provided by Article 15 of the Agreement, the person concerned shall submit to the French agency a record of the periods of coverage or equivalent periods completed under United States laws. This record shall be submitted by the United States agency if the person so requests.

PART III

Provisions on Benefits

ARTICLE 7

1. The agency of a Contracting State with which an application for benefits is first filed in accordance with Article 21 of the Agreement shall inform the appropriate agency of the other Contracting State of this fact without delay, either directly or through the liaison agency, and provide such evidence and other available information as may be necessary to complete action on the claim.

2. The agency of a Contracting State which receives an application that was first filed with an agency of the other Contracting State shall without delay provide the appropriate agency of the other Contracting State, either directly or through the liaison agency, with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the Competent Authorities or, with their authorization, the liaison agencies.

ARTICLE 8

1. When necessary for the application of Part III of the Agreement, an agency of a Contracting State shall send a record of the periods of coverage completed by a person under the laws of that Contracting State to the liaison agency of the other Contracting State.

2. When claiming benefits in accordance with Article 17 of the Agreement

(a) the claimant shall be responsible for furnishing the French agency all documentary evidence necessary to allow that agency to determine if it can take into account periods certified by the United States agency under paragraph 1;

(b) services performed in the United States shall be considered to be performed underground if they would be so considered in accordance with the special French laws on social security for mine workers if the services had been performed in France.

3. In applying Part III of the Agreement in cases where periods of coverage under the laws of both Contracting States coincide, the agency of each Contracting State shall take into account only the periods of coverage completed under the laws which it applies.

4. For purposes of Article 13, paragraph 4(a), of the Agreement, one quarter of coverage certified by the United States agency shall equal one quarter of coverage credited under French laws.

ARTICLE 9

Benefits which are awarded by an agency of a Contracting State in accordance with the Agreement shall be revalued according to the same provisions as benefits awarded in accordance with the laws of that Contracting State.

ARTICLE 10

1. Benefits payable by an agency of a Contracting State shall be paid directly to the beneficiary in accordance with the laws of that Contracting State.

2. Laws of a Contracting State which provide for reduction, suspension, or termination of benefits to take account of other social security benefits or other income may be applied to beneficiaries even if benefits are being paid by virtue of the laws of the other Contracting State or if the individual receives income in the territory of the other Contracting State.

3. Notwithstanding paragraph 2, pro rata old-age, survivors, or disability benefits payable by the agency of one Contracting State in accordance with Part III of the Agreement shall not be reduced to take account of pro rata benefits of the same type that are paid by an agency of the other Contracting State.

PART IV

Miscellaneous Provisions

ARTICLE 11

In accordance with measures to be agreed upon by the Competent Authorities or, with their authorization, the liaison agencies, the agencies of the two Contracting States shall communicate to each other, upon request and, if necessary, through the liaison agencies, all available information likely to affect a specified individual's benefits paid under the Agreement.

ARTICLE 12

1. Where administrative assistance is furnished under Article 19, paragraph 1, of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed by the agency which requested it.

2. Upon request, the agency of either Contracting State shall furnish without cost to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

3. Where the agency of a Contracting State requires that a person in the territory of the other Contracting State who is receiving or applying for benefits under the Agreement submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

4. Amounts owed under paragraph 1 or 3 shall be reimbursed upon presentation of a statement of expenses.

ARTICLE 13

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon by the Competent Authorities or the liaison agencies.

ARTICLE 14

Unless otherwise required by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 15

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Washington, D.C., on October 21, 1987, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE UNITED STATES COMPETENT AUTHORITY:

Otis R. Bowen M. D.
Dorcas R. Hardy

FOR THE FRENCH COMPETENT AUTHORITIES:

Emmanuel de Margerie

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND GERMANY

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TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9542[1]

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Agreement signed at Washington January 7, 1976;
Entered into force December 1, 1979.
With final protocol.
And administrative agreement
Signed at Washington June 21, 1978;
Entered into force October 30, 1979;
Effective December 1, 1979.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

The United States of America and the Federal Republic of Germany,

Being Desirous of regulating the relationship between them in the area of social security,

Have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement

1. "Territory" means, as regards the United States of America, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards the Federal Republic of Germany, the area in which the Basic Law (Grundgesetz) of the Federal Republic of Germany is in force;
2. "Laws" means the laws and regulations concerning the systems of social security specified in Article 2, paragraph 1;
3. "Competent Authority" means, as regards the United States of America, the Secretary of Health, Education, and Welfare, and as regards the Federal Republic of Germany, the Federal Minister of Labor and Social Affairs (Bundesminister für Arbeit und Sozialordnung);
4. "Agency" ("Träger") means the institution or authority responsible for implementing laws specified in Article 2, paragraph 1;
5. "Competent Agency" means the agency responsible for applying the laws in a specific case;
6. "Employment" means employment or self-employment as defined by the applicable laws;
7. "Period of coverage" ("Versicherungszeit") means a period payment of contributions or a period of earnings from employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. "Benefit" ("Rente") means an old-age, dependent, survivor, or disability insurance benefit provided by the applicable laws;
9. "Cash benefit" ("Geldleistung") means a benefit ("Rente") and any other cash payment provided by the applicable laws; and
10. "Benefit-in-kind" ("Sachleistung") means a rehabilitation benefit-in-kind provided by the applicable laws.

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   (a) as regards the Federal Republic of Germany, laws governing
   — Wage Earners' Pension Insurance
   — Salaried Employees' Pension Insurance

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[1]This text is a copy of a Department of State publication. TIAS 9542 is the finding aid comparable to a citation to the United States Code. Regulations of the Secretary of Health and Human Services relating to totalization agreements are contained in Part 404, Subpart T, chapter III, title 20, Code of Federal Regulations.

— Miners' Pension Insurance
— Steelworkers' Supplementary Pension Insurance
— Farmers' Old Age Benefits; and
(b) as regards the United States of America, laws governing
— the Federal Old-Age, Survivors and Disability Insurance Program.

2. Laws within the meaning of paragraph 1 of this Article shall not include laws resulting for one Contracting State from other international treaties or supranational legislation, or from laws promulgated for their implementation.

Article 3

Unless otherwise provided, the present Agreement shall apply to

(a) nationals of a Contracting State within the meaning of Article XXV, paragraph 6, of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany of October 29, 1954 and of paragraph 22 of the Protocol thereto,[2] with the proviso that henceforth the term "Certificate of Residence" (Heimatschein) shall be replaced by the term "Certificate of Nationality" (Staatsangehörigkeitsausweis),

(b) refugees within the meaning of Article 1 of the

Convention on the Status of Refugees dated July 28, 1951[3] and the Protocol to that Convention dated January 31, 1967,[4]

(c) stateless persons within the meaning of Article 1 of the Convention on the Status of Stateless Persons dated September 28, 1954,[5]

(d) other persons with respect to the rights they derive from a national of either Contracting State, from a refugee or a stateless person within the meaning of this Article, and

(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article.

Article 4

1. Unless otherwise specified in the present Agreement, the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of either Contracting State shall in the application of the laws of one Contracting State receive equal treatment with the nationals of that Contracting State.

2. Nationals of one Contracting State who ordinarily reside outside of the territories of both Contracting States shall be granted the cash benefits and benefits-in-kind provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who ordinarily reside outside of the territories of both Contracting States.

Article 5

Unless otherwise provided in this Agreement, the laws of one Contracting State which require that entitlement to or payment of cash benefits be dependent on residence in the territory of that Contracting State, shall not be applicable to the persons designated in Article 3(a), (b), (c) and (d) who ordinarily reside in the territory of the other Contracting State.

Article 6

1. Except as otherwise provided in this Article, persons who have employment within the territory of one of the Contracting States shall be subject to the laws on compulsory coverage of only that Contracting State even when the employer is located in the territory of the other Contracting State.

2. The employment of a person in the territory of one Contracting State to which he was sent from the territory of the other Contracting State by his employer in that territory shall continue to be subject to the laws on compulsory coverage of only the other Contracting State, as if he were still employed in the territory of the other Contracting State, even when the employer also has a place of business (Zweigniederlassung) in the territory of the Contracting State of employment.

3. In the case of the employment of a person as an officer or member of a crew of a sea-going vessel which has been granted the right to fly the flag of the Federal Republic of Germany, a German aircraft, an American vessel, an American aircraft, a vessel which has been granted the right to fly the flag of the Federal Republic of

[2] TIAS 3593; 7 UST 1866, 1909.
[3] 189 UNTS 152.
[4] TIAS 6577; 19 UST 6223.
[5] 360 UNTS 136.

Germany and is at the same time an American vessel under United States laws, or of an aircraft which is a German aircraft but which is treated as an American aircraft under United States laws, the following rules shall apply with regard to the laws on compulsory coverage:

(a) If the person is subject to the laws of only one of the Contracting States, he shall remain subject to those laws.

(b) If the person is a national of one of the Contracting States and subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State of which he is a national.

(c)(1) If the person is a national of both Contracting States or is a member of a group specified in Article 3(b), (c) or (e) and is subject to the laws of both Contracting States, he shall be subject only to the laws of the Contracting State in whose territory he ordinarily resides.

(2) If he does not ordinarily reside in the territory of either Contracting State, he and his employer may apply for an exemption from the laws on compulsory coverage of one of the Contracting States under the procedure provided in paragraph 5 of this Article.

(d) A person who is a national of one Contracting State employed on the vessel or aircraft of the other Contracting State and who is not otherwise subject to the laws on compulsory coverage of either Contracting State shall be subject to the laws on compulsory coverage of the other Contracting State.

4. (a) A national of one of the Contracting States employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(b) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he does not ordinarily reside, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

(c) A person who is a national of one of the Contracting States employed in the territory of the other Contracting State, where he ordinarily resides, by an employee of the first Contracting State who is a national of the first Contracting State shall be subject to the laws on compulsory coverage of only the other Contracting State.

5. Upon application of a person specified in the preceding paragraphs of this Article, except paragraph 3(c)(2), and his employer, or upon application of a self-employed person, the Competent Authority (or the office designated by it)* of the Contracting State from whose laws on compulsory coverage the exemption is desired may grant the exemption, if the person and his employer, or the self-employed person, will be subject to the laws on compulsory coverage of the other Contracting State.

PART II

Benefit Insurance System

Article 7

1. Where periods of coverage have been completed under the laws of both Contracting States, the Agency which determines the entitlement to cash benefits and benefits-in-kind under its laws shall take account of periods of coverage which are creditable under the laws of the other Contracting State and which do not coincide with periods of coverage credited under its own laws.

2. This Agreement shall not result in entitlement to a benefit under the laws of a Contracting State unless a minimum period of coverage has been completed by a person under its laws and the completed period of coverage alone does not result in entitlement to benefits. In the application of United States laws, periods of coverage totaling 6 quarters of coverage shall be the required minimum, and, in the application of German laws, periods of coverage totaling 18 months shall be the required minimum.

3. Where a person's periods of coverage are less than the minimum period required by paragraph 2 of this Article under the laws of one Contracting State, those periods of coverage, whether or not consecutive, shall nevertheless be considered by the Agency of the other Contracting State for purposes of the computation of a benefit, as if they were periods of coverage under its own laws, provided that

*Supplementary Agreement dated October 2, 1986, added "(or the office designated by it)".

(a) the person has the minimum period required by paragraph 2 under the laws of the other Contracting State and has entitlement for benefits with or without the application of paragraph 1 of this Article under the laws of the other Contracting State, or

(b) the person is entitled to benefits under the laws of the other Contracting State with less than the minimum period required by paragraph 2.

Article 8

The following provisions shall apply to the Federal Republic of Germany:

1. The periods of coverage to be considered in accordance with Article 7 shall be taken into account by the insurance system whose Agency is competent for determining a person's benefit if only the German laws were applied. If under this provision the Competent Agency is the Miners' Pension Insurance system, the periods of coverage completed under United States laws shall be taken into account by the Miners' Pension Insurance system if the periods were completed underground in a mine.

2. Periods of coverage completed under United States laws which are to be considered by the Competent Agency for the computation of the benefit payable by it, in accordance with Article 7, paragraph 3, shall only increase the number of creditable insurance years under German laws.

3. In determining the benefit computation base (Rentenbemessungsgrundlage), only periods of coverage considered under German laws shall be taken into account.

4. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, only half of the benefit amount which is attributable to deemed periods of coverage (Zurechnungszeit) shall be payable.

5. If the requirements for entitlement to a benefit are met only by applying the provisions of Article 7, paragraph 1, one-half of the child's supplement or of the supplement to the orphan's pension shall be payable.[7]

6. For purposes of terminating the right to the compensatory cash benefit for a miner who has been separated from his mining occupation (Knappschaftsausgleichsleistung), a United States mining establishment shall be treated as equivalent to a German mining establishment.

7. In the case of a self-employed craftsman, whose liability status for compulsory coverage is conditional upon payment of a minimum number of contributions, periods of coverage completed under United States laws shall be taken into account to determine whether the craftsman is liable.

Article 9

The following provisions shall apply to the United States of America:

1. Where entitlement to a benefit under United States laws is established according to the provisions of Article 7, paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on

(a) the person's average earnings credited exclusively under United States laws, and

(b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.[8]

2. Periods during which a person was determined by a Competent German Agency to be totally disabled under German laws shall, when it is to his advantage, be excluded in determining whether he meets the insured status requirements under United States laws and in computing a Primary Insurance Amount under this Agreement.

3.[9]

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[7] Supplementary Agreement dated October 2, 1986, amended paragraph 5 in its entirety.
[8] Supplementary Agreement dated October 2, 1986, amended paragraph 1 in its entirety.
[9] Supplementary Agreement dated October 2, 1986, deleted paragraph 3.

PART III

Miscellaneous Provisions

Chapter 1

Administrative Cooperation

Article 10

The Competent Authorities, Agencies and associations of the Agencies of the Contracting States shall assist each other in applying this Agreement and in implementing each other's laws as if they were applying their own laws. This assistance shall be free of charge subject to exceptions to be agreed upon by the Contracting States.

Article 11

1. A final decision of a Court or a ruling by a Competent Authority or an Agency of a Contracting State, concerning a matter arising under its laws, which is enforceable under its laws, shall be recognized by the other Contracting State. A Contracting State may refuse recognition if the decision or ruling is contrary to its public policy including its requirements for due process of law.
2. The final decisions and rulings referred to in paragraph 1 shall be enforced under the laws specified in Article 2, paragraph 1, in the territory of the Contracting State in which the decisions or rulings are recognized.

Article 12

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an Agency of the other Contracting State in accordance with its laws.
2. A document or a copy of a document certified as authentic which is accepted as authentic by the Competent Authority or an Agency of one Contracting State shall be accepted as authentic by the Competent Authority or an Agency of the other Contracting State without further certification.

Article 13

1. The Competent Authorities and the Agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.
2. An application or document may not be rejected by a Competent Authority or an Agency because it is in the official language of the other Contracting State.

Article 14

1. An application in writing or other document presented to the Competent Authority or an Agency of a Contracting State shall have the same effect as if it were presented to the Competent Authority or an Agency of the other Contracting State.
2. A person who files an application for cash benefits under the laws of a Contracting State may request that it not be treated as an application for cash benefits under the laws of the other Contracting State, or that it be effective on a different date in the other Contracting State, within the limitations of and in conformity with the laws of the other Contracting State.

Article 15

The consular officers of a Contracting State at diplomatic or consular posts in the territory of the other Contracting State, at the request of a person who is a national of the first Contracting State, may take measures necessary to safeguard and maintain the rights of that person. The person's authorization need not be proven.

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Chapter 2

Implementation of the Agreement

Article 16

1. The Competent Authorities of the Contracting States shall, by mutual agreement, establish administrative procedures which are required to implement this Agreement. They shall inform each other of any amendments or additions to their laws.

2. Liaison agencies designated for the implementation of this Agreement are:

(a) In the Federal Republic of Germany—

(1) for the Wage Earners' Pension Insurance system, the Landesversicherungsanstalt Freie und Hansestadt Hamburg (Regional Insurance Institution for Hamburg), Hamburg,

(2) for the Salaried Employees' Pension Insurance system, the Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Salaried Employees), Berlin,

(3) for the Miners' Pension Insurance system, the Bundesknappschaft (Federal Miners' Insurance Institution), Bochum,

(4) for the Steelworkers' Supplementary Pension Insurance system, the Landesversicherungsanstalt für das Saarland (Regional Insurance Institution for the Saarland), Saarbrücken,

(5) to the extent that the German statutory sickness insurance agencies are involved in administering the Agreement, the Bundesverband der Ortskrankenkassen (Federal Association of Local Sickness Insurance Agencies), Bonn;[10]

(b) In the United States of America—

the Social Security Administration.

Article 17

An Agency of a Contracting State may validly pay cash benefits to a person in the territory of the other Contracting State in the currency of its own State or of the other Contracting State. If the cash benefits are paid in the currency of the other Contracting State, the currency conversion shall be at the exchange rate in force on the day the remittance is made.

Article 18[11]

Article 19

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities it shall, at the request of either Contracting State, be submitted for arbitration in accordance with the following procedures:

(a) An arbitration board shall be established on an ad hoc basis with each Contracting State appointing one member, and both members agreeing on a citizen from a third North Atlantic Treaty Organization member state as chairman who shall be appointed by the governments of the two Contracting States. The members shall be appointed within two months, and the chairman within three months, after one Contracting State has informed the other that it will refer the dispute to an arbitration board.

(b) If the deadlines mentioned in paragraph 2(a) are not met, each Contracting State may, in the absence of other agreements, ask the Secretary General of the North Atlantic Treaty Organization to make the necessary appointments. If the Secretary General is a national of one of the Contracting States or is prevented from acting for another reason, the Deputy Secretary General shall make the appointments. In case the Deputy Secretary General also is a national of one of the two Contracting States or is prevented from acting for another reason, the next Assistant Secretary General following in rank by protocol who is not a national of one of the two Contracting States and who is not prevented from acting for another reason, shall make the appointments.

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[10]Supplementary Agreement dated October 2, 1986, added clause (5).
[11]Supplementary Agreement dated October 2, 1986, deleted Article 18.

(c) The arbitration board shall make its decision by majority vote on the basis of the agreements existing between the parties and general international law. Its decisions shall be binding on both Contracting States. Each Contracting State shall bear the cost for its member, as well as for its representation in the proceedings before the arbitration board; the cost for the chairman as well as other expenses, shall be shared equally between the Contracting States. The arbitration board can make a different decision concerning the allocation of expenses. In all other respects the arbitration board shall establish its own rules of procedure.

Part[12] IV

Transitional and Final Provisions

Article 20

1. This Agreement shall not establish any claim to payment of cash benefits for any period before its entry into force.
2. In the implementation of this Agreement, consideration shall also be given to periods of coverage and other events relevant under the laws occurring before the entry into force of this Agreement.
3. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.
4. Cash benefits to which there was entitlement before the entry into force of this Agreement may be recomputed under its provisions. At least the amount of the cash benefits previously payable shall continue to be payable after the recomputation.

Article 21

The attached Final Protocol shall form an integral part of this Agreement.

Article 22

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Agreement.

Article 23

1. This Agreement shall be ratified, and the instruments of ratification shall be exchanged as soon as possible in Bonn.
2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.[13]

Article 24

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.
2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of cash benefits acquired under it shall be retained; rights in the process of being acquired shall be recognized in conformity with supplementary agreements.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement and affixed thereto their seals.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: David Mathews

FOR THE FEDERAL REPUBLIC OF GERMANY: Von Staden
Walter Arendt

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[12]As in original. Probably should be "PART".
[13]Dec. 1, 1979.

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between the United States of America and the Federal Republic of Germany, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to Article 1, paragraph 2, of the Agreement: The term "laws" shall include the regulations adopted by the German Agencies (Träger) relating to the systems of social security specified in Article 2, paragraph 1, of the Agreement.
2. With reference to Article 2 of the Agreement:
   (a) Regarding Article 2, paragraph 1(b), of the Agreement, with respect to the United States of America, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program are title II of the Social Security Act of 1935, as amended,[14] and regulations promulgated under the authority provided therein, except sections 226, 226A[15] and 228 of that title and regulations pertaining to those sections, and Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 as amended.
   (b) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Pension Insurance system or to the Farmers' Old-Age Benefit system of the Federal Republic of Germany.
   (c) If under the laws of one of the Contracting States the requirements for the application of another Convention or a supranational regulation are fulfilled in addition to the requirements for the application of this Agreement, the Agency of this Contracting State shall disregard the other Convention or supranational regulation when applying this Agreement.
   (d) Article 2, paragraph 2, of the Agreement and paragraph 2(c) of this Protocol shall not apply if the social security laws resulting for the Federal Republic of Germany from international treaties or supranational law or designed to implement such treaties or law contain provisions relating to the apportionment of insurance burdens.
3. With reference to Article 4 of the Agreement:
   (a) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.
   (b) German laws which guarantee participation of the insured and of the employers in the organs of self-government of the Agencies and of their associations as well as in the adjudication of social security matters shall remain unaffected.
4. With reference to Article 5 of the Agreement:
   (a) The German laws regarding cash benefits in respect of periods of coverage accumulated other than under federal law shall remain unaffected.
   (b) German laws concerning the granting of medical, occupational and supplementary rehabilitation measures by the Agencies of the Pension Insurance system shall remain unaffected.
   (c) Article 5 of the Agreement shall also apply to United States laws under which payment of cash benefits is made dependent on physical presence in the territory of the United States.
   (d) For persons who ordinarily reside in the United States of America, Article 5 of the Agreement shall not apply with respect to benefits under German laws on account of occupational invalidity, total invalidity, or miners' occupational invalidity (verminderte bergmännische Berufsfähigkeit) if the occupational invalidity, total invalidity or miners' occupational invalidity is also due to labor market conditions.[16]
5. With reference to Article 6 of the Agreement:
   (a) Article 6 of the Agreement shall also apply to persons who are treated as employees under the laws specified in Article 2, paragraph 1(a), of the Agreement.
   (b) Article 6, paragraph 4, of the Agreement shall apply to an employee of any German public employer.
   (c) With respect to the United States of America, the term "employed by that Contracting State" in Article 6, paragraph 4(a), of the Agreement shall mean employed by the Federal Government or one of its instrumentalities, and the term "employee of the first Contracting State" in Article 6, paragraph 4, (b) and (c), of

[14] 49 Stat. 622; 42 U.S.C. §402.
[15] Supplementary Agreement dated October 2, 1986, inserted ", 226A".
[16] Supplementary Agreement dated October 2, 1986, added subparagraph (d).

the Agreement shall mean an employee of the Federal Government or one of its instrumentalities.

(d) Article 6, paragraph 5, of the Agreement shall not apply to exemptions from United States laws of United States nationals who ordinarily reside in the territory of the United States of America.

6. With reference to Article 7 of the Agreement:

(a) Periods of coverage completed under United States laws shall not be taken into account for the grant of increments (Leistungszuschlag) provided under German laws governing the Miners' Pension Insurance system.

(b) Under German pension insurance, Article 7, paragraph 1, of the Agreement shall apply mutatis mutandis to cash benefits and benefits-in-kind which may be granted at the discretion of the Agency.

(c) Notwithstanding Article 7, paragraph 3, of the Agreement, the United States Agency shall not be required to take account of periods of coverage completed under German laws in the case of any person who is entitled to transitional benefits on the basis of Section 227 of the United States Social Security Act.

7. With reference to Article 8 of the Agreement:

(a) If, under German laws, provisions on a new assessment of deemed periods of coverage (Zurechnungszeit) and on a pro rata payment of supplements to the orphan's pension enter into force, Article 8, paragraphs 4 and 5, of the Agreement shall not apply to events to which these provisions are applicable.[17]

(b) United States nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be eligible for voluntary insurance in the German pension insurance system if they have validly paid contributions for at least 60 months to this system or were eligible for voluntary insurance on the basis of transitional laws in force before October 19, 1972. This rule shall also apply to the persons specified in Article 3(b) and (c) of the Agreement who ordinarily reside in the territory of the United States of America.

(c) Upon application United States nationals may pay voluntary contributions to the German pension insurance system retroactively, if eligibility for continued voluntary insurance was abolished by the laws governing voluntary insurance which entered into force on October 19, 1972 because they were either ordinarily residing or domiciled outside the territory of the Federal Republic of Germany. Retroactive voluntary contributions may be made for periods from October 19, 1972 to the day of the entry into force of the Agreement provided that these periods are not already covered by contributions paid to the German pension insurance system. Events relevant to eligibility for a benefit (Eintritt des Versicherungsfalles) which arise within one year after the entry into force of the Agreement shall not preclude payment of retroactive voluntary contributions. An application can be validly made only during the five-years' period following the date of entry into force of this Agreement. The Competent Agency may accept payments by installments for a period of up to three years.

(d) United States nationals to whom contributions were refunded between October 19, 1972 and the date of entry into force of this Agreement, may repay such contributions upon application. Such repayment may only be made in the full amount of the contributions refunded; it shall have the effect of cancelling any entry of refund of contributions in the insurance record. Paragraph 7(c), the last three sentences shall apply accordingly.

(e) In applying German laws concerning the calculation of benefits, in particular provisions concerning the higher assessment of periods of contributions in cases where a prescribed minimum number of years of coverage has been completed, periods of coverage completed under United States laws shall not be taken into account.[18]

8. In the implementation of the Agreement, German laws to the extent that they contain more favorable provisions for persons who have suffered damages because of their political attitude or because of their race, religion or ideology, shall remain unaffected.

DONE at Washington on January 7, 1976, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: David Mathews

FOR THE FEDERAL REPUBLIC OF GERMANY: Von Staden
Walter Arendt

[Text in German omitted.]

[17]Supplementary Agreement dated October 2, 1986, revised paragraph 7(a) in its entirety.
[18]Supplementary Agreement dated October 2, 1986, added subparagraph (e).

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY OF JANUARY 7, 1976

The Government of the United States of America and the Government of the Federal Republic of Germany,

In application of Article 16.1 of the Agreement between the United States of America and the Federal Republic of Germany on Social Security of January 7, 1976, hereinafter referred to as the "Agreement",

Have agreed as follows:

ARTICLE 1

For the purposes of the application of this Administrative Agreement, terms used in the Administrative Agreement shall have the meaning they have in the Agreement.

ARTICLE 2

The liaison agencies established under Article 16.2 of the Agreement and the Competent Agencies referred to in the second sentence of Article 3 of this Administrative Agreement with the participation of the Competent Authorities shall agree jointly upon uniform administrative measures, procedures, and forms for the implementation of the Agreement. The provisions of Article 16.1 of the Agreement shall not be affected.

ARTICLE 3

Where German laws do not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance System shall be responsible within the scope of that system for the determination and award of cash benefits, with the exception of medical, occupational, and supplementary rehabilitation benefits, provided that:

(a) periods of coverage have been completed or are creditable under German and United States laws; or

(b) the person eligible ordinarily resides in the territory of the United States of America; or

(c) the person eligible is a United States national ordinarily residing outside the territories of both Contracting States.

The jurisdiction of the German special institutions ("Sonderanstalten") shall not be affected.

ARTICLE 4

1. The Agency of the Contracting State to whose laws on compulsory coverage a person will remain subject in accordance with Article 6 of the Agreement shall issue to the person or his employer a certificate to that effect when requested to do so by the person or his employer.

(a) In the Federal Republic of Germany that certificate shall be issued by the sickness insurance agency to which pension insurance contributions are paid.

(b) In the United States of America the certificate shall be issued by the Social Security Administration.

2. In order to prove that a person is exempt from the laws on compulsory coverage of one Contracting State, it shall be necessary for the person or his employer to present the certificate referred to in paragraph 1 confirming that the person is subject to the laws on compulsory coverage of the other Contracting State.

3. Article 6.2 of the Agreement shall apply to a person if he is transferred from the territory of one Contracting State to the territory of the other Contracting State within the context of a preexisting employment relationship, and the transfer is not expected to be permanent as evidenced by a contract or a written notice from the employer.[19]

4. (a) In making a determination concerning an exemption from the laws on compulsory coverage of one Contracting State pursuant to Article 6.3(c)(2) or Article 6.5 of the Agreement, the nature and circumstances of the employment shall be taken into consideration. Before making the determination, the Competent Authority (or the

[19] Supplementary Administrative Agreement dated October 2, 1986, struck out "In cases where the United States laws on compulsory coverage apply in accordance with Article 6.2 of the Agreement, but there is no provision under United States laws for contributions with respect to such coverage, Article 6.1 of the Agreement shall apply.".

office designated by it)[20] of the other Contracting State shall be given an opportunity to express an opinion; the opinion shall in particular address the issue of whether the person concerned and his employer will be made subject to the laws on compulsory coverage of the other Contracting State.

(b) With regard to the Federal Republic of Germany, if the person is not employed in its territory he shall be deemed to be employed at the place of his last previous employment. If the person was not employed previously in that territory, he shall be deemed to be employed at the place where the German Competent Authority has its seat.

(c) Subparagraphs (a) and (b) shall also apply to self-employed persons.

ARTICLE 5

1.[21]

2. In applying the Agreement, the United States Agency shall take account of German periods of coverage occurring before 1937[22] in accordance with United States laws.

3. (a) In determining eligibility for cash benefits under Article 7.1 of the Agreement, the United States Agency shall credit one quarter of coverage for every three months of coverage certified as creditable by the German Competent Agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

(b) In determining eligibility for cash benefits and benefits-in-kind under Article 7.1 of the Agreement, the German Competent Agency shall credit three months of coverage for each quarter of coverage certified as creditable by the United States Agency to the extent that the months in any such quarter of coverage do not coincide with periods of coverage already credited as periods of coverage under German laws.

4. Regarding Article 7.3 of the Agreement, the United States Agency shall consider German periods of coverage which are less than the minimum required by Article 7.2 of the Agreement only if the person is not eligible for a benefit under United States laws without considering such periods of coverage.

5. Article 9.2 of the Agreement shall only apply in cases where eligibility for a benefit under United States laws exists by applying Article 7.1 of the Agreement.

6.[23]

7.[24]

ARTICLE 6

1.[25]

2. When an individual is already entitled to a benefit from the United States Competent Agency under Part II of the Agreement and subsequently meets the requirements for receipt of a higher benefit amount from the United States Competent Agency without recourse to Part II of the Agreement, the higher benefit amount shall become payable from the date that the requirements are met.

ARTICLE 7

1. An application for cash benefits under the laws of one Contracting State shall also be treated as an application for cash benefits under the laws of the other Contracting State if the application indicates that periods of coverage under the laws of the other Contracting State are also alleged. Article 14.2 of the Agreement shall remain unaffected.

2. In the application of Article 15 of the Agreement, additional requirements under national statutes for the protection of privacy and confidentiality of personal data shall remain unaffected.

ARTICLE 8

1. In the application of Article 14 of the Agreement, applications, appeals, statements, and documents necessary to establish eligibility shall be forwarded without delay by the Competent Agency of a Contracting State to which they have been presented to the liaison agency of the other Contracting State.

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[20] Supplementary Administrative Agreement dated October 2, 1986, added "(or the office designated by it)".
[21] Supplementary Administrative Agreement dated October 2, 1986, deleted this paragraph.
[22] Supplementary Administrative Agreement dated October 2, 1986, deleted "or earnings based on such periods of coverage".
[23] See footnote 21.
[24] See footnote 21.
[25] Supplementary Administrative Agreement dated October 2, 1986, deleted paragraph 1.

2. In the application of Article 7 of the Agreement, the German Competent Agency shall notify the United States Competent Agency of the periods of coverage creditable under German laws, together with a list of the months in the periods of coverage.[36]

3. In accordance with procedures to be agreed upon pursuant to Article 2, the agencies referred to in Article 2 shall furnish each other available information or copies of documents relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

4. Each Agency shall be the final judge of the probative value of documentary evidence presented to it from whatever source. Article 12.2 of the Agreement shall not be affected by this provision.

5. The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number and total amount of benefits and commuted lump-sum payments, by type of benefit.

ARTICLE 9

The Agency of a Contracting State shall pay any cash benefits due to beneficiaries in the territory of the other Contracting State without recourse to a liaison agency of the other Contracting State.

ARTICLE 10

1. Where administrative assistance is requested under Article 10 of the Agreement, expenses, other than postage and regular personnel and operating costs of the Competent Authorities, agencies, and associations of the Agencies providing the assistance, shall be reimbursed.

2. Where the Agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the Agency of the other Contracting State in which the claimant or beneficiary resides at the expense of the Agency which requests the examination.

3. The Agency of either Contracting State shall furnish to the liaison agency of the other Contracting State at its request and without expense any medical information and documentation relevant to the disability of the claimant or beneficiary which may come into its possession.

ARTICLE 11

For the purpose of Article 11.2 of the Agreement, the text of the decision or ruling must contain a certification by a body competent to issue such a certification testifying to its enforceability under the laws of the Contracting State in whose territory the certification was issued.

ARTICLE 12

For the purpose of Article 13.1 of the Agreement, laws governing the recourse to interpreters shall not be affected. Rulings, official notifications, or other documents may be transmitted directly to a person resident in the territory of the other Contracting State by registered letter.

ARTICLE 13

Where an Agency of one Contracting State is required to make payments to an Agency of the other Contracting State, such payments shall be made in the currency of the other Contracting State.

ARTICLE 14[37]

ARTICLE 15

The use of information furnished under the Agreement by one Contracting State to another with regard to an individual shall be governed by the respective national statutes for the protection or privacy and confidentiality of personal data.

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[36]Supplementary Administrative Agreement dated October 2, 1986, revised paragraph 2 in its entirety.
[37]Supplementary Administrative Agreement dated October 2, 1986, deleted Article 14.

ARTICLE 16

1. (a) Pursuant to the provisions of Article 2, paragraph 51a, subparagraphs 2 and 3 of the German Wage-Earners' Pension Insurance (Reform) Act (ArVNG) and of Article 2, paragraph 49a, subparagraphs 2 and 3 of the German Salaried Employees' Pension Insurance (Reform) Act (AnVNG), all of which entered into force on October 19, 1972, persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive voluntary contributions to the German pension insurance system for the period from January 1, 1956, through December 31, 1973. Such persons shall be deemed to be eligible for voluntary insurance under the German pension insurance system as if they were German nationals.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement. Such an application shall be filed with the German Competent Agency to which the person's last contribution was paid or, if the last contribution was paid to the Miners' Pension Insurance system, with the liaison agency of the Salaried Employees' Pension Insurance system.

(c) The contributions shall be paid directly to the Agency specified in paragraph (b) with which the application was filed.

(d) The contributions may be accepted by the agency concerned in installments over a period of up to three years. Such contributions may be made only up to the German contribution assessment ceiling for monthly earnings of the year 1973. The calculation of the German benefit computation base applicable to the insured persons shall be based on the figures for 1973.

(e) Events relevant to eligibility for a benefit under German laws which arise in the period between October 18, 1972, and the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(f) The application of the provisions of this section shall in all other respects be subject to the German transitional laws which entered into force on October 19, 1972.

2. (a) Pursuant to the provisions of Section 10 and Section 10a of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG), persons who are persecutees within the meaning of the German Federal Act concerning Compensation for Victims of National Socialist Persecution (BEG), who are United States nationals and who ordinarily reside in the territory of the United States of America may upon application pay retroactive contributions to the German pension insurance system.

(b) An application under paragraph (a) of this section may be validly filed within one year after the date specified in the first sentence of Article 18 of this Administrative Agreement.

(c) In applying the provisions specified in paragraph (a) of this section, periods of coverage under United States laws shall be taken into account to the same extent as periods of coverage under German laws for the required period of coverage of 60 calendar months.

(d) Events relevant to eligibility for a benefit under German laws which arise before the end of the first twelve months after the date specified in the first sentence of Article 18 of this Administrative Agreement shall not preclude payment of the contributions.

(e) If a person specified in paragraph (a) of this section has died before the date specified in the first sentence of Article 18 of this Administrative Agreement, Section 10 subsection 3 and Section 10a subsection 3 of the German Act concerning Compensation in Social Insurance for Victims of National Socialist Injustice (WGSVG) shall apply accordingly.

(f) Paragraph (d) of section (1) of this Article shall also apply to this section.

ARTICLE 17

This Administrative Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months after the date of entry into force of this Administrative Agreement.

ARTICLE 18

This Administrative Agreement shall enter into force on the date on which both Governments will have informed each other that the steps necessary under their national statutes to enable the Administrative Agreement to take effect have been

taken.[25] It shall be effective from the date of entry into force of the Agreement.

DONE at Washington on June 21, 1978, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA: Joseph A. Califano, Jr.

FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY: B. von Staden

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[25]Oct. 30, 1979.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

The Government of the United States of America and

The Government of the Kingdom of the Netherlands,

Being desirous of regulating the relationship between the two States in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

For the purposes of this Agreement

1. "United States" means the United States of America and "Netherlands" means the Kingdom of the Netherlands;
2. "Territory" means,
   as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and
   as regards the Netherlands, the territory of the Kingdom in Europe;
3. "National" means,
   as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and
   as regards the Netherlands, a person of Netherlands nationality;
4. "Laws" means the laws and regulations specified in Article 2;
5. "Competent Authority" means,
   as regards the United States, the Secretary of Health and Human Services, and
   as regards the Netherlands, the Minister for Social Affairs and Employment;
6. "Agency" means,
   as regards the United States, the Social Security Administration, and
   as regards the Netherlands, any institution or authority charged with implementing all or part of the laws specified in Article 2, paragraph 1(b), as well as Netherlands tribunals that are competent for cases under those laws;
7. "Period of coverage" means a period of payment of contributions, a period of earnings from employment or self-employment or a period of residence, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. "Benefit" means any benefit or pension provided for in the laws of either Contracting State, including any increase of, or any additional amount payable with, a benefit or pension;
9. Any term not defined in this Article shall have the meaning assigned to it in the laws which are being applied.

Article 2

1. This Agreement shall apply:
   (a) As regards the United States, to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:
      (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and
      (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
   (b) As regards the Netherlands, to the laws governing:
      (i) invalidity insurance;
      (ii) general old-age insurance;
      (iii) general widow's and orphan's insurance;
      (iv) sickness insurance (cash benefits and benefits in kind);
      (v) unemployment insurance;
      (vi) children's allowances.
2. The application of this Agreement shall be extended to future legislation of a Contracting State which creates new categories of beneficiaries under the laws specified in paragraph 1 unless the Competent Authority of that Contracting State notifies the Competent Authority of the other Contracting State in writing within three months of the date of the official publication of the new legislation that no such extension of the Agreement is intended.

3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international agreement or supranational legislation on social security which may be in force between either Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

4. This Agreement shall not apply to social or medical assistance schemes or to special schemes for civil servants or persons treated as such.

Article 3

Unless otherwise provided, this Agreement shall apply to all persons who are or have been subject to the laws of one or both Contracting States as well as to family members and survivors of such persons insofar as they derive their rights from these persons.

Article 4

1. Except as provided in paragraph 2, the following persons, while residing in the territory of a Contracting State, shall be equated with nationals of that State in the application of its laws:

(a) nationals of the other Contracting State;

(b) refugees as defined in Article 1 of the Convention relating to the Status of Refugees of July 28, 1951, and in paragraph 1 of Article 1 of the Protocol of January 31, 1967, to the said Convention;

(c) stateless persons as defined in Article 1 of the Convention relating to the Status of Stateless Persons of September 28, 1954;

(d) family members and survivors, irrespective of their nationality, of the persons mentioned under subparagraphs (a), (b) and (c) with regard to rights which they derive from such persons.

2. Paragraph 1 shall not apply with regard to United States laws on compulsory coverage.

Article 5

Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts payment of invalidity, old-age or survivors cash benefits solely because a person resides outside or is absent from the territory of that Contracting State shall not be applicable to persons who reside in the territory of the other Contracting State.

PART II

Provisions Concerning Applicable Laws

Article 6

Unless otherwise provided in this Part, a person employed within the territory of a Contracting State shall, with respect to that employment, be subject to the laws of only that Contracting State, even if the person concerned resides in the territory of the other Contracting State, or if his employer or the offices of the employer are located in the territory of the other Contracting State.

Article 7

A self-employed person who resides within the territory of a Contracting State shall be subject to the laws of only that State.

Article 8

Unless otherwise provided in Article 9, if a person resides in the territory of the Netherlands and is engaged in employment or self-employment in that territory, the person shall be subject only to Netherlands laws with respect to any employment or self-employment performed in the territory of either Contracting State.

Article 9

1. Where a person in the service of an employer having a place of business in the territory of a Contracting State is sent from that territory by that employer to work in the territory of the other Contracting State for a period not expected to exceed 5 years,

the person shall remain subject to the laws of only the first Contracting State as if he were employed in the territory of the first Contracting State.

2. Paragraph 1 shall not apply in the case of a person who is sent by an employer from the territory of the United States to the territory of the Netherlands if the person is also employed in the territory of the Netherlands by a different employer located in that territory.

3. If, under paragraph 1, a person continues to be subject to the laws of a Contracting State from whose territory he has been sent to the territory of the other Contracting State, that paragraph shall also apply by analogy to the person's family members who accompany him, unless they are themselves employed or self-employed in the territory of the latter Contracting State.

Article 10

1. (a) If a person is employed as an officer or member of the crew on an American vessel and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the United States.

(b) If a person is employed as an officer or member of the crew on a non-American vessel and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Netherlands.

2. If a person is employed as an officer or member of the crew on an aircraft and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State in whose territory the employer is headquartered.

Article 11

Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of this Part concerning self-employment if the person is a resident of the first Contracting State and according to the provisions of this Part concerning employment in any other case.

Article 12

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first Contracting State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

3. The provisions of paragraph 2 shall apply by analogy to the family members accompanying the persons referred to in that paragraph who are sent by the Government of a Contracting State to the territory of the other Contracting State, unless these family members themselves are employed or self-employed in the territory of the other Contracting State.

Article 13

For the purposes of Netherlands laws, a person who is subject to Netherlands laws in accordance with this Part shall be considered to be resident in the territory of the Netherlands, and a person who is subject to United States laws in accordance with this Part shall be considered not to be resident in that territory.

Article 14

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of this Part in the interest of any person or category of persons, provided that the affected person shall be subject to the laws of one of the Contracting States.

PART III

Provisions on Benefits

Chapter A

Provisions Applicable to the United States

Article 15

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under the laws of the Netherlands and which do not coincide with periods of coverage already credited under United States laws.

2. In applying paragraph 1, the agency of the United States shall not take into account periods of coverage which are credited under Netherlands laws solely on the basis of periods of residence in the territory of the Netherlands.

3. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified by the agency of the Netherlands; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

4. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

Chapter B

Provisions Applicable to the Netherlands

Article 16

Invalidity Benefit

1. If a national of one of the Contracting States or a person designated in Article 4, paragraph 1(b) or (c), was subject to United States laws at the time when incapacity for work followed by invalidity occurred and had previously completed a total of at least 12 months of coverage under the Netherlands laws on invalidity insurance, he shall be entitled to a benefit determined in accordance with those Netherlands laws and calculated according to the rules of paragraphs 3 to 7.

2. For purposes of paragraph 1, a person shall be considered to be subject to United States laws if the person is insured for a benefit under such laws or has credit for at least 4 quarters of coverage under such laws during a period of 8 calendar quarters ending with the calendar quarter in which the incapacity for work followed by invalidity occurred as determined in accordance with Netherlands laws.

3. The amount of the benefit referred to in paragraph 1 shall be calculated in proportion to the ratio of the total length of the periods of coverage completed by the person concerned under Netherlands laws after the age of 15 years to the length of the period between the date on which he reached the age of 15 years and the date of his incapacity for work followed by invalidity.

4. If, at the time when incapacity for work followed by invalidity occurred, the person concerned was an employed person or a person treated as such, the benefit due shall be determined according to the Disablement Insurance Act of February 18, 1966 (WAO). If not, the benefit due shall be determined according to the General Disablement Benefits Act of December 11, 1975 (AAW).

5. The following shall be considered as periods of coverage completed under Netherlands laws:

(a) periods of coverage completed during employment under the Disablement Insurance Act of February 18, 1966 (WAO);

(b) periods of coverage completed during self-employment under the General Disablement Benefits Act of December 11, 1975 (AAW);

(c) periods of employment and periods treated as such completed in the Netherlands before July 1, 1967.

6. In cases referred to in the first sentence of paragraph 4, when a period of coverage under the WAO coincides with a period of coverage under the AAW, only the period completed under the WAO shall be taken into account.

7. In cases referred to in the second sentence of paragraph 4, when a period of coverage under the AAW coincides with a period of coverage under the WAO, only the period completed under the AAW shall be taken into account.

Article 17

Old-age Pension

1. The Netherlands agency shall determine the amount of the pension directly and exclusively on the basis of the periods of coverage completed under the Netherlands law mentioned in Article 2, paragraph 1(b)(ii).

2. Periods before January 1, 1957 during which a national of one of the Contracting States or a person described in Article 4, paragraph 1(b) and (c) resided in the territory of the Netherlands after reaching the age of 15 years or during which, while residing in another country, the person was gainfully employed in the territory of the Netherlands shall also be considered as periods of coverage if the person does not satisfy the conditions of the Netherlands law permitting such periods to be treated for that person as periods of coverage.

3. The periods referred to in paragraph 2 shall only be taken into consideration for calculation of the old-age pension if the person concerned has resided for at least 6 years in the territory of one or both Contracting States after reaching the age of 59 years and only while the person is residing in the territory of either Contracting State. However, these periods shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old-age pension under the legislation of a country other than the Netherlands.

Article 18

Survivors Pension

1. If a national of one of the Contracting States or a person designated in Article 4, paragraph 1(b) or (c), was subject to United States laws at the time of his death and had previously completed a total of at least 12 months of coverage under the Netherlands law on widows and orphans insurance, his widow or orphans shall be entitled to a benefit determined in accordance with Netherlands law and calculated in accordance with the rules of paragraph 3.

2. For purposes of paragraph 1, a person shall be considered to be subject to United States laws if the person is insured for a benefit under such laws or has credit for at least 4 quarters of coverage under such laws during a period of 8 calendar quarters ending with the calendar quarter in which the person died.

3. The amount of the benefit referred to in paragraph 1 shall be calculated in proportion to the ratio of the total length of the periods of coverage completed by the deceased under Netherlands law before he reached the age of 65 years to the length of the period between the date on which he reached the age of 15 years and the date of his death, but at the latest the date on which he reached the age of 65 years.

PART IV

Miscellaneous Provisions

Article 19

The Competent Authorities of the two Contracting States shall:

(a) Make all necessary administrative arrangements for the application of this Agreement;

(b) Designate liaison bodies in their respective territories to facilitate the application of this Agreement;

(c) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(d) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement.

Article 21

Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to the Competent Authority or an agency of that Contracting State, but which is instead submitted within the same period to the Competent Authority or an agency of the other Contracting State shall be considered to have been submitted on time. In such case, the Competent Authority or agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison body of the other Contracting State.

Article 22

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.

2. If an applicant has filed a written application for benefits with the agency of one Contracting State and has not specifically restricted the application to benefits under the laws of that State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

Article 23

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or an agency of the other Contracting State in the application of this Agreement.

Article 24

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the English or Dutch language.

2. The Competent Authority and agencies of a Contracting State may not reject applications or other documents solely on the grounds that they are written in a foreign language, provided they are in the English or Dutch language.

Article 25

1. Payments under this Agreement may be validly made in the currency of the Contracting State making the payment.

2. Money transfers effected under this Agreement shall be made in accordance with any relevant agreements in force between both Contracting States at the time of transfer.

3. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately decide on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 26

1. Disputes between the two Contracting States regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If such a dispute cannot be settled within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral tribunal whose composition and procedure shall be agreed upon by the Contracting States. The decision of the arbitral tribunal shall be final and binding upon the Contracting States.

Article 27

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

PART V

Transitional and Final Provisions

Article 28

1. This Agreement shall also apply to events relevant to rights under the laws of either Contracting State which occurred prior to its entry into force. However, no benefits shall be payable under this Agreement for any period prior to its entry into force, nor shall a lump-sum death benefit be payable if the person died before its entry into force. Nevertheless, periods of coverage completed before the entry into force of this Agreement shall be taken into account in determining benefit rights, except that neither State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

2. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

3. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.

4. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

5. The period of work referred to in Article 9, paragraph 1, shall be measured no earlier than the date on which this Agreement enters into force.

Article 29

Both Contracting States shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the last notification.

Article 30

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at The Hague on December 8, 1987, in duplicate in the English and Dutch languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

John Shad

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS:

Hans van den Broek

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

Pursuant to Article 19(a) of the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security, concluded on December 8, 1987, the Competent Authorities:

for the United States of America, the Secretary of Health and Human Services

for the Netherlands, the Minister for Social Affairs and Employment

have agreed on the following provisions:

CHAPTER I

General Provisions

Article 1

1. For the application of this Administrative Arrangement, "Agreement" means the Agreement between the United States of America and the Kingdom of the Netherlands on Social Security.
2. Other terms shall have the meaning given to them in the Agreement.

Article 2

1. The following are designated as liaison bodies, pursuant to Article 19(b) of the Agreement.

For the United States: the Social Security Administration;

For the Netherlands:

a. as regards old-age, widows and orphans insurance: Sociale Verzekeringsbank (Social Insurance Bank);

b. as regards invalidity insurance: Gemeenschappelijk Administratiekantoor (Joint Administration Office).

2. The liaison bodies of the Contracting States shall agree on joint forms and procedures necessary to implement the Agreement.
3. For the application of the Agreement, the liaison bodies may communicate directly with each other as well as with any person wherever the person may reside.

Article 3

The Netherlands agency competent for the application of Article 16 of the Agreement shall be the Nieuwe Algemene Bedrijfsvereniging (New General Professional Association).

CHAPTER II

Provisions Concerning Applicable Laws

Article 4

1. For the purposes of this Article, "institution" means, as regards the United States, the Social Security Administration, and, as regards the Netherlands, the Sociale Verzekeringsraad (Social Insurance Council).
2. When the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the institution of that Contracting State, upon request of an employed person, the employer of that person or a self-employed person, shall issue a certificate stating that the employed person or self-employed person is subject to those laws. This certificate shall be proof that the named person is exempt from the laws on compulsory coverage of the other Contracting State.
3. When an employed person described in Article 9, paragraph 2, of the Agreement, to whom a certificate has been issued under paragraph 2 by the institution of the United States, subsequently becomes employed in the territory of the Netherlands by a different employer located in that territory, the employed person must, without delay, inform the institution of the United States. This institution shall thereupon issue an amended certificate and inform the institution of the Netherlands.
4. When Article 9, paragraph 3, or Article 12, paragraph 3, of the Agreement applies to a family member of an employed person sent from the territory of the Netherlands to the territory of the United States and that family member subsequently becomes

employed or self-employed in the territory of the United States, this family member must without delay inform the institution of the Netherlands.

5. The institution of the Contracting State which has issued a certificate under this Article shall send copies of it to the employed person and the employer of that person or the self-employed person and, as needed, the institution of the other Contracting State.

CHAPTER III

Provisions on Benefits

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 22 of the Agreement shall inform the appropriate agency of the other Contracting State of this fact without delay, either directly or by way of the liaison body, and provide such evidence and other documentation available to it as may be necessary for the agency of the other Contracting State to complete action on the claim.

2. The agency of a Contracting State which receives an application that was first filed with an agency of the other Contracting State shall without delay provide the latter agency, either directly or by way of the liaison body of the other Contracting State, with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agency.

CHAPTER IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the liaison bodies of the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the liaison body of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 7

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. When applying its laws, the agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 8

The institutions designated in Article 4 of this Administrative Arrangement shall exchange statistics on the number of certificates issued under the said Article and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 9

1. Where administrative assistance is requested under Article 20 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.

2. Upon request, the agency of either Contracting State shall furnish without expense to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

3. An agency of a Contracting State may require a claimant or beneficiary who is present in the territory of the other Contracting State to undergo a medical examination in the territory of either Contracting State.

4. Amounts owed under paragraph 1 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 10

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement or this Administrative Arrangement shall be used exclusively for purposes of implementing the Agreement. Such information received by an agency, a liaison body or an institution of a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done at The Hague, on December 8, 1987 in duplicate in the English and Dutch languages, both texts being equally authentic.

For the Competent Authority
of the United States of America:

John Shad

For the Competent Authority
of the Kingdom of the Netherlands:

Louw de Graaf

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND NORWAY

* * * * * * *

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 10818[1]

* * * * * * *

Agreement signed at Washington January 13, 1983;
Entered into force July 1, 1984.
With final protocol.
And administrative agreement
Signed at Washington January 13, 1983;
Entered into force July 1, 1984.

AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA

AND THE KINGDOM OF NORWAY

ON SOCIAL SECURITY

The Government of the United States of America and the Government of the Kingdom of Norway,

BEING DESIROUS of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

DEFINITIONS AND LAWS

Article 1

For the purpose of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Norway, the territory of the Kingdom of Norway;
2. "Norwegian Continental Shelf" means the sea bed and its subsoil of the submarine areas outside the coast of the Kingdom of Norway over which Norway has sovereign rights for the purpose of exploring it and exploiting its natural resources;
3. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952,[2] as amended, and as regards Norway, a person of Norwegian nationality;
4. "Laws" means the laws and regulations specified in Article 2;
5. "Competent Authority" means, as regards the United States, the Secretary of Health and Human Services, and as regards Norway, the Ministry of Health and Social Affairs;
6. "Agency" means, as regards the United States, the Social Security Administration, and as regards Norway, the office or authority responsible for applying all or part of the laws designated in Article 2;
7. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
8. "Benefit" means any benefit provided for in the laws of either Contracting State;
9. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954;[3]
10. "Refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951,[4] and the Protocol to that

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[1] This text is a copy of a Department of State publication. TIAS 10818 is the finding aid comparable to a citation to the United States Code. Regulations of the Secretary of Health and Human Services relating to totalization agreements are contained in Subpart T, Part 404, chapter III, title 20, Code of Federal Regulations.

[2] 66 Stat. 166; 8 U.S.C. §1101.

[3] 360 UNTS 136.

[4] 189 UNTS 152.

Convention dated January 31, 1967.[5]

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   a. As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
      (i) Title II of the Social Security Act[6] and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
      (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954[7] and regulations pertaining to those chapters;
   b. As regards Norway:
      (i) the National Insurance Act of June 17, 1966, except chapters 2, 3, 4, 11 and 12, unless otherwise provided in the Final Protocol;
      (ii) the Act of June 19, 1969, on special supplements to benefits from the National Insurance Scheme;
      (iii) the Act of December 19, 1969, on compensation supplements to benefits from the National Insurance Scheme.

2. Unless otherwise provided in the Agreement, laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

PART II

GENERAL PROVISIONS

Article 3

This Agreement, unless it provides otherwise, shall apply to:
(a) nationals of either Contracting State,
(b) refugees,
(c) stateless persons,
(d) other persons with respect to the rights they derive from a national of either Contracting State, a refugee or a stateless person, and
(e) nationals of a State other than a Contracting State who are not included among the persons referred to in paragraph (d) of this Article, and who are or have been subject to the laws of a Contracting State.

Article 4

1. Unless otherwise provided in this Agreement, the persons designated in Article 3(a), (b), (c) or (d) who reside in the territory of either Contracting State shall, in the application of the laws of a Contracting State, receive equal treatment with the nationals of that Contracting State.

2. Nationals of a Contracting State who reside outside the territories of both Contracting States shall receive benefits provided by the laws of the other Contracting State under the same conditions which the other Contracting State applies to its own nationals who reside outside the territories of both Contracting States.

3. Unless otherwise provided in this Agreement, the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to the persons designated in Article 3 who reside in the territory of the other Contracting State.

PART III

PROVISIONS ON COVERAGE

Article 5

1. Unless otherwise provided in this Article, a person employed within the territory of one of the Contracting States shall with respect to that employment be subject to the laws on compulsory coverage of only that Contracting State.

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[5] TIAS 6577; 19 UST 6223.
[6] 49 Stat. 622; 42 U.S.C. §402.
[7] 68A Stat. 3; 26 U.S.C. §§1-8023.

2. If a person in the service of an employer having a place of business in the territory of one Contracting State is sent by that employer to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws on compulsory coverage of only the first Contracting State as if he were still employed in the territory of the first Contracting State, provided that his employment in the territory of the other Contracting State is not expected to last for more than 5 years. The preceding sentence shall apply regardless of whether the remuneration for such service is paid by the employer in the first Contracting State. The spouse and children who accompany a person sent by an employer located in the territory of one Contracting State to the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State for any period in which they are not employed in the other Contracting State.

3. (a) The provisions of paragraph 1 shall also apply in cases where a person is resident in Norway and employed on installations for the exploration and exploitation of natural resources on the Norwegian continental shelf.

(b) The provisions of paragraph 2 shall also apply in cases where a person is employed on installations for the exploration and exploitation of natural deposits on the Norwegian continental shelf as if he were employed in the territory of Norway.

4. A person who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State of which he is a resident.

5. (a) Part III of this Agreement shall not apply to the categories of persons mentioned in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961,[a] or of the Vienna Convention on Consular Relations of April 24, 1963.[a]

(b) Nationals of one of the Contracting States who are not mentioned in the provisions of the Vienna Conventions referred to in subparagraph (a) and who are employed by that Contracting State in the territory of the other Contracting State shall be subject to the laws on compulsory coverage of only the first Contracting State.

6. If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is subject to the laws on compulsory coverage of both Contracting States, the person shall be subject to the laws on compulsory coverage of only the Contracting State whose flag the vessel flies.

7. The Competent Authority of one Contracting State may grant an exception to the provisions of this Article if the Competent Authority of the other Contracting State agrees, provided that the affected person shall be subject to the laws of one of the Contracting States.

PART IV

PROVISIONS ON BENEFITS

Chapter I—Provisions Applicable to the United States

Article 6

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, pension point years completed under Norwegian laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit four quarters of coverage for each pension point year certified as creditable by the agency of Norway; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, a pro rata primary insurance amount shall be computed based on the ratio of the total periods of coverage completed under United States laws to the total periods of coverage completed under the laws of the two Contracting States. Benefits payable under United States laws on the basis of an earnings record where a pro rata primary insurance amount has been computed shall be paid on the basis of that pro rata primary insurance amount.

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[a] TIAS 7502; 23 UST 3227.
[a] TIAS 6820; 21 UST 77.

4. For any calendar quarter credited with a quarter of coverage based on Norwegian periods of coverage according to paragraph 1, the agency of the United States shall take into account for purposes of computing a pro rata primary insurance amount the amount of any earnings credited to the person for that period under Norwegian laws, subject to the maximum annual creditable earnings limitation under United States laws.

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1.

6. Where entitlement to a benefit under United States laws is established according to the provisions of Article 6.1 of the Agreement, the requirements of Article 6.3 and 6.4 shall be considered to be met if the agency of the United States computes the pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws.

Chapter II—Provisions Applicable to Norway

Article 7

1. (a) Where a person has completed at least one year of coverage under Norwegian laws, quarters of coverage completed under United States laws shall be taken into account to determine entitlement to disability, survivors and old-age pensions provided they do not coincide with periods of coverage already credited under Norwegian laws. To become entitled to a Norwegian supplementary pension based on the preceding sentence, pension points must have been credited for at least one year.

(b) Four quarters of coverage completed under United States laws shall correspond to one year of coverage under Norwegian laws.

2. (a) The basic disability or survivors pension of a person present in one of the Contracting States shall be computed on the basis of actual periods of coverage completed under Norwegian laws and on future periods of coverage based on the ratio of the actual periods of coverage to the full Norwegian insurance period of 40 years, provided that the resulting benefit amount is higher than a pension computed exclusively under Norwegian laws.

(b) The supplementary disability or survivors pension of a person present in one of the Contracting States shall be computed on the basis of actual pension point years credited under Norwegian laws and on future pension point years based on the ratio of the actual pension point years credited to the full Norwegian pension point earnings period of 40 years, provided that the resulting benefit amount is higher than a pension computed exclusively under Norwegian laws.

(c) Where a disability or survivors pension computed exclusively under Norwegian laws without recourse to this Agreement is higher than the total benefits payable by the agencies of both Contracting States in accordance with the provisions of this Agreement, the agency of Norway shall pay the benefit amount computed in accordance with the provisions of this Agreement increased by an amount which is equal to the difference between the amount payable by the agency of Norway without recourse to this Agreement and the total benefits payable by the agencies of both Contracting States in accordance with this Agreement.

3. An old-age pension shall be computed on the basis of periods of coverage fulfilled and pension point years credited under Norwegian laws.

4. A disability or survivors pension granted according to Norwegian laws shall be converted to an old-age pension when the person reaches the general pension age. The old-age pension shall be computed on the basis of periods of coverage and pension point years used to compute the disability or survivors pension.

5. Supplementary pensions payable to United States nationals shall be computed in accordance with the overcompensation provisions of Section 7-5 of the National Insurance Act in accordance with the regulations laid down pursuant to the third paragraph of that section. Pension increments due to overcompensation shall be paid to United States nationals also when they are resident in the territory of the United States.

6. A compensation supplement shall only be payable to persons resident in the territory of Norway. Payment of rehabilitation benefits, basic benefits, attendance benefits and child care benefits to persons not resident or present in the territory of Norway shall be determined in each case pursuant to Norwegian laws.

PART V

MISCELLANEOUS PROVISIONS

Article 8

The Competent Authorities of the two Contracting States shall:

(a) Conclude an administative agreement and make such other administrative arrangements as may be necessary for the implementation and application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 9

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

(a) for the United States, the Social Security Administration;

(b) for Norway, the National Insurance Institution.

Article 10

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

Article 11

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in the official language of the other Contracting State.

Article 12

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State or provides information indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. Notwithstanding paragraph 1, an applicant may specify that an application filed with an agency of one Contracting State not be considered an application under the laws of the other Contracting State or that the application be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. The provisions of Part IV of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article 13

1. A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of the other Contracting State.

2. Any claim, notice, or appeal which must be filed within a given period of time with the agency of one Contracting State shall be considered to have been timely filed if the claim, notice, or appeal has been filed within such period with the agency of the other Contracting State. In such case, the agency with which the claim, notice, or appeal has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

Article 14

In case provisions designed to restrict the exchange of currencies are issued in either Contracting State, the Governments of both Contracting States shall immediately confer on the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 15

1. Disagreements between the two Contracting States regarding the interpretation or implementation of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If a disagreement cannot be resolved by the Competent Authorities of the Contracting States, it shall at the request of either Contracting State be submitted for arbitration in accordance with procedures to be agreed upon by the Competent Authorities.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 16

1. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

2. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

3. Consideration shall be given to periods of coverage under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.

4. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

5. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

Article 17

The attached Final Protocol shall form an integral part of this Agreement.

Article 18

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 19

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.[10]

IN WITNESS whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Washington on 13 January 1983 in duplicate in the English and Norwegian languages, the two texts being equally authentic.

For the Government of the United States of America:

Richard S. Schweiker

For the Government of the Kingdom of Norway:

Knut Hedemann

[10]July 1, 1984.

FINAL PROTOCOL FOR THE IMPLEMENTATION

OF THE AGREEMENT ON SOCIAL SECURITY

between the

UNITED STATES OF AMERICA

and the

KINGDOM OF NORWAY

At the time of signing the Agreement between the United States of America and the Kingdom of Norway on Social Security, the undersigned stated that they are in agreement on the following points:

1. The Agreement shall not result in coverage under United States laws if those laws do not provide for the collection of contributions with respect to such coverage. Article 5.1 of the Agreement shall apply when Article 5.2 is not applicable as a result of the preceding sentence.

2. Article 5.2 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

3. With respect to Article 5.2, a person who is sent by an employer having a place of business in the territory of Norway to the territory of the United States shall be subject to Norwegian laws, including those chapters of the National Insurance Act excepted from the scope of this Agreement in Article 2.1.b.(i).

4. With respect to Article 5.2, a person who is sent by an employer having a place of business in the territory of the United States to the territory of Norway and who is subject to United States laws shall also be subject to Norwegian laws with respect to those chapters of the National Insurance Act excepted from the scope of this Agreement in Article 2.1.b.(i).

5. Article 5.2 shall apply in cases where a national of a State other than a Contracting State is sent by an employer in the territory of one Contracting State to the territory of the other Contracting State, provided that its application does not conflict with any provision of another treaty or international agreement between a Contracting State and a third State.

6. A United States national not resident in Norway, employed on an installation for the exploration and exploitation of natural resources on the Norwegian continental shelf, to whom the provisions of Article 5.2 do not apply, and who is subject to United States laws with respect to that employment shall be exempt from Norwegian laws as defined in Article 2.1.b.(i) and remain subject to United States laws.

7. After the entry into force of this Agreement, the provisions of the second paragraph of Section 1-3 of the Norwegian National Insurance Act concerning exemptions from the National Insurance Scheme shall no longer be applied to persons to whom this Agreement is applicable.

8. With respect to Article 5.6, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

9. This Agreement does not affect the right of Norwegian nationals who are resident or present in the United States to apply for voluntary insurance under the National Insurance Scheme of Norway.

10. Provisions of Norwegian laws limiting retroactivity of the right to benefits shall not apply to rights arising under Article 7, provided that the claimant submits an application for benefits within one year after the date of entry into force of this Agreement.

11. Funeral grants under Norwegian laws shall be payable in respect of persons who were subject to Norwegian laws at the time of their death.

12. Nothing in this Agreement shall supersede the exchange of notes between the Norwegian Foreign Ministry and the Ambassador of the United States of America in Oslo on June 26, 1968, concerning old-age, survivors and disability benefits.

13. Article 4 of the Agreement shall be applied by the United States in a manner consistent with Section 233(c)(4) of the United States Social Security Act.

DONE AT Washington on 13 January 1983 in duplicate in the English and Norwegian languages, the two texts being equally authentic.

For the Government of the

For the Government of the

United States of America:

Richard S. Schweiker

Kingdom of Norway:

Knut Hedemann

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY

between the

UNITED STATES OF AMERICA

and the

KINGDOM OF NORWAY

IN CONFORMITY with Article 8(a) of the Agreement between the United States of America and the Kingdom of Norway on Social Security of January 13, 1983, hereinafter referred to as "the Agreement," the following provisions have been agreed upon:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

The liaison agencies designated in Article 9.2 of the Agreement shall agree upon joint procedures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

CHAPTER 2

PROVISIONS ON COVERAGE

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Article 5 of the Agreement, the agency of that Contracting State shall issue upon request of the employer, employee or self-employed person a certificate stating that the concerned employee or self-employed person is covered by those laws. The certificate shall be proof that the employee or self-employed person is exempt from the laws on compulsory coverage of the other Contracting State.
2. The certificate referred to in paragraph 1 shall be issued
   —In the United States:
   By the Social Security Administration
   —In Norway:
   By the local National Insurance Office where the person resides in the cases mentioned in Article 5.1 and 5.4, and by the National Insurance Office for Social Insurance Abroad in the cases mentioned in Article 5.2, 5.3, 5.5 and 5.6.

CHAPTER 3

PROVISIONS ON BENEFITS

Article 4

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 12 of the Agreement shall inform the agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the agencies.

Article 5

In the application of Article 6 of the Agreement, the Norwegian liaison agency shall notify the United States liaison agency of the years in which a person is credited with pension points under Norwegian laws and, if necessary, the person's creditable earnings in any such year.

Article 6

In the application of Article 7 of the Agreement, the United States liaison agency shall notify the Norwegian liaison agency of the periods of coverage completed under United States laws.

CHAPTER 4

MISCELLANEOUS PROVISIONS

Article 7

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 2.1 of the Agreement.

Article 8

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 9

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 10

1. Where administrative assistance is requested under Article 9 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed in accordance with procedures to be agreed upon by the liaison agencies.

2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination. The expenses incurred shall be reimbursed in accordance with procedures to be agreed upon by the liaison agencies.

3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

Article 11

The agency of a Contracting State shall pay any cash benefits due to beneficiaries under the Agreement without recourse to the liaison agency of the other Contracting State.

Article 12

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 13

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Washington on 13 January 1983 in duplicate in the English and Norwegian languages, both texts being equally authentic.

For the Government of the United States of America:

Richard S. Schweiker

For the Government of the Kingdom of Norway:

Knut Hedemann

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE PORTUGUESE REPUBLIC ON SOCIAL SECURITY

The Government of the United States of America

and

The Government of the Portuguese Republic,

BEING DESIROUS of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

For the purpose of this Agreement:

1. "Territory" means,
   as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and
   as regards Portugal, the territory on the European continent and the archipelagos of the Azores and Madeira;
2. "National" means,
   as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and
   as regards Portugal, a person of Portuguese nationality;
3. "Laws" means
   the laws and regulations specified in Article 2, which are in force in the territory of either Contracting State or in any part of that territory;
4. "Competent Authority" means,
   as regards the United States, the Secretary of Health and Human Services,
   and as regards Portugal, the minister or other corresponding authority responsible for the social security schemes in all or any part of the territory of Portugal;
5. "Agency" means,
   as regards the United States, the Social Security Administration, and
   as regards Portugal, the body or authority entrusted with the application of the social security schemes under the laws specified in paragraph 1(b) of Article 2;
6. "Period of Coverage" means
   a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
7. "Benefit" means
   any benefit provided for in the laws of either Contracting State.

Article 2

1. For the purpose of this Agreement, the applicable laws are:
   (a) As regards the United States, the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:
      (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and
      (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
   (b) As regards Portugal,
      (i) The laws governing the general social security system of old-age, survivors, and disability insurance;

(ii) The laws governing special systems for certain categories of workers, to the extent that these laws relate to the risks covered by the laws referred to in clause (i).

2. This Agreement shall apply also to future laws which supplement or amend the laws specified in paragraph 1 of this Article.

3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international agreement or supranational legislation on social security which may be in force between either Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

4. This Agreement shall not apply to social assistance programs or to special systems for civil servants or persons treated as such.

Article 3

1. A person who is a national of a Contracting State or who has been subject to the laws of a Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with nationals of the other Contracting State in the application of the laws of the other Contracting State regarding the benefits provided for in those laws.

2. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because a person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

PART II

Provisions on Coverage

Article 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to self-employment shall be subject only to the laws of the Contracting State of which he is a resident.

Article 5

1. (a) Where a person who is covered under the laws of a Contracting State with respect to work performed for an employer having a place of business in the territory of that Contracting State is sent by that employer to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State as if he were employed in the territory of the first Contracting State, provided that the period of employment in the territory of the other Contracting State is not expected to exceed five years. If the period of employment is prolonged due to unforeseen circumstances for more than five years, the laws of the first Contracting State shall continue to apply for a new period of not more than one year, provided that the Competent Authority of the other Contracting State consents. Any extension must be requested before the termination of the initial period of five years.

(b) Subparagraph (a) shall apply where a person who has been sent by his employer from the territory of a Contracting State to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

2. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of this Part concerning self-employment if the person is a resident of the first Contracting State and according to the provisions of this Part concerning employment in any other case.

3. A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to employment as an officer or member of a crew on a ship or aircraft shall be subject only to the laws of the Contracting State of which he is a resident.

Article 6

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first Contracting State. For the purposes of this paragraph, employment by the Government of a Contracting State includes employment by an instrumentality thereof.

Article 7

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of Articles 4, 5, and 6 with respect to any person or category of persons, provided that the affected person or persons shall be subject to the laws of one of the Contracting States.

Article 8

1. A national of a Contracting State residing in the territory of the other Contracting State shall be entitled to register for any voluntary insurance provided under the laws of the other Contracting State on the same basis as nationals of the other Contracting State.

2. A person who has been subject to the laws of a Contracting State shall be entitled to register for any optional continued insurance provided under the laws of that Contracting State on the same basis as a national of that Contracting State, and, where necessary, periods of coverage completed under the laws of the other Contracting State shall be taken into account, provided that the person resides in the territory of the first Contracting State.

PART III

Provisions on Benefits

Article 9

The following provisions shall apply to the United States:

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under the laws of Portugal and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified by the agency of Portugal; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

Article 10

The following provisions shall apply to Portugal:

1. Where a person has completed at least one year of coverage under Portuguese law, but does not have sufficient periods of coverage to satisfy the requirements for

entitlement to benefits under Portuguese law, the agency of Portugal shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under the laws of the United States and which do not coincide with periods of coverage already credited under Portuguese law.

2. Where Portuguese laws establish as a condition for receiving certain benefits that the periods of coverage be completed in a given profession or occupation which is subject to a special pension system, in determining eligibility for such benefits only the periods completed under United States laws in the same profession or occupation shall be totalized with periods of coverage under such special system. If the total of such periods of coverage does not result in entitlement under the special system, such periods shall be used to determine eligibility for benefits of the general system applicable under Portuguese laws to employed persons.

3. In determining eligibility for benefits under paragraph 1 of this Article, the agency of Portugal shall credit three months of coverage for every quarter of coverage certified by the agency of the United States.

4. Where a person satisfies the conditions required by Portuguese law for entitlement to benefits solely by virtue of the provisions of paragraph 1 of this Article, the agency of Portugal shall calculate the amount of the benefits to which the person is entitled on the basis of (a) the periods of coverage completed exclusively under Portuguese law and (b) the person's average earnings credited exclusively under Portuguese law.

5. If a person who resides in the territory of Portugal becomes entitled to benefits under paragraph 1 as well as benefits under United States laws, and the amount of the combined benefits is less than the benefit amount which would be payable based on the minimum basic benefit amount payable under Portuguese laws, the agency of Portugal shall pay, in addition to the pro rata amount calculated according to paragraph 4, a supplement equal to the difference between the amount of such combined benefits and the amount of benefits which would be payable to the person based on such minimum basic benefit amount.

6. Entitlement to a benefit from Portugal which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under Portuguese law to establish entitlement to an equal or higher benefit without the need to invoke the provisions of paragraph 1.

Article 11

Periods of coverage of a Contracting State which have been completed under a Social Security pension system to which this Agreement does not apply, but which are taken into account by a system governed by the laws of that Contracting State referred to in Article 2 shall be considered as periods of coverage for the purpose of totalization by the agency of the other Contracting State.

PART IV

Miscellaneous Provisions

Article 12

The Competent Authorities of the two Contracting States shall:

(a) Make all necessary administrative arrangements for the application of this Agreement;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 13

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement.

2. For the purpose of facilitating the implementation of this Agreement, liaison agencies shall be designated in an administrative arrangement.

Article 14

Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to an agency of that Contracting State, but which is instead submitted within the same period to the agency of the other Contracting State shall be considered to have been submitted on time. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the appropriate agency of the other Contracting State either directly or by way of the liaison agency.

Article 15

1. Where the laws of a Contracting State provide that any document which is submitted to a Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to a Competent Authority or an agency of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempt from requirements for authentication by diplomatic or consular authorities.

Article 16

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.

2. If an applicant has filed a written application for benefits with the agency of one Contracting State and has not specifically restricted the application to benefits under the laws of that State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

3. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

Article 17

The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the English or Portuguese language.

Article 18

1. Payments under this Agreement may be made in the currency of the Contracting State making the payments.

2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States shall immediately adopt the measures necessary to insure the transfer of sums owed by either Contracting State under this Agreement.

Article 19

This Agreement may be amended in the future by supplementary agreements, which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 20

1. Disagreements between the two Contracting States regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the Competent Authorities.

2. If such a disagreement cannot be resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

PART V

Transitional and Final Provisions

Article 21

1. Upon entry into force of this Agreement, the Notes exchanged between the Ambassador of the United States of America and the Minister of Foreign Affairs of Portugal on May 1, 1968, shall cease to have effect; provided, however, that no person shall suffer any loss of rights to benefits outside the territory of Portugal which he had under those Notes or would have had if those Notes had remained in effect.

2. In the application of this Agreement, consideration shall be given to periods of coverage under the laws of either Contracting State which occurred prior to the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods which occurred prior to the earliest date for which periods may be credited as periods of coverage under its laws.

3. This Agreement shall also apply to events relevant to rights under the laws of either Contracting State which occurred prior to its entry into force.

4. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force of a lump-sum death benefit if the person died before its entry into force.

5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

6. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.

7. In applying Article 5, paragraph 1, in the case of persons who were sent to the territory of a Contracting State prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.

Article 22

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 23

Both Contracting States shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the last notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Lisbon on March 30, 1988, in duplicate, in the English and Portuguese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:
Edward M. Rowell	Manuel Filipe Correia de Jesus

Administrative Arrangement for the Implementation of the Agreement between the United States of America and the Portuguese Republic on Social Security

The Government of the United States of America and

The Government of the Portuguese Republic,

In conformity with Article 12, paragraph (a), of the Agreement between the United States of America and the Portuguese Republic on Social Security of this date, hereinafter referred to as the "Agreement," have agreed as follows:

Chapter 1

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 13, paragraph 2, of the Agreement shall be:

(a) for the United States, the Social Security Administration,

(b) for Portugal, the Department of International Relations and Social Security Conventions (Departamento de Relacoes Internacionais e Convencoes de Seguranca Social).

2. The liaison agencies designated in paragraph 1 shall agree upon the joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State, upon request of the employer or self-employed person, shall issue a certificate stating that the employee or self-employed person is subject to those laws. This certificate shall be proof that the named worker is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

(a) In the United States:

by the Social Security Administration;

(b) In Portugal:

on the European continent by the Regional Social Security Center (Centro Regional de Seguranca Social) where the worker concerned is registered,

in the Autonomous Region of Madeira by the Regional Social Security Directorate (Direccao Regional de Seguranca Social), Funchal,

in the Autonomous Region of the Azores by the Regional Social Security Directorate (Direccao Regional de Seguranca Social), Angra do Heroismo.

3. The agency of a Contracting State which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

Chapter III

Provisions on Benefits

Article 4

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 16 of the Agreement shall inform the liaison agency of the other Contracting State of this fact without delay and provide such evidence and other information as may be required to complete action on the claim.

2. The liaison agency of a Contracting State which receives an application that was first filed with an agency of the other Contracting State shall without delay provide the liaison agency of that Contracting State with such evidence and other available information as may be required for it to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Chapter IV

Miscellaneous Provisions

Article 5

In accordance with measures to be agreed upon by the Contracting States pursuant to Article 2 of this Administrative Arrangement, the liaison agency of one Contracting State shall, upon request of an agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 6

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. When applying its laws, the agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 8

1. Where administrative assistance is requested under Article 13 of the Agreement, expenses other than regular personnel and operating costs of the agencies providing the assistance shall be reimbursed.
2. Upon request, the agency of either Contracting State shall furnish without cost to the agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.
3. Where the agency of a Contracting State requires that a person in the territory of the other Contracting State who is receiving or applying for benefits under the Agreement submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.
4. The liaison agency of one Contracting State shall reimburse amounts owed under paragraph 1 or 3 of this Article upon presentation of a detailed statement of expenses by the liaison agency of the other Contracting State.

Article 9

Unless otherwise required by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 10

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE at Lisbon on March 30, 1988, in duplicate, in the English and Portuguese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE PORTUGUESE REPUBLIC:
Edward M. Rowell	Manuel Filipe Correia de Jesus

AGREEMENT BETWEEN THE UNITED STATES AND SPAIN ON SOCIAL SECURITY

The United States of America and Spain,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

1. For purposes of this Agreement, the expressions and terms listed below shall have the following meaning:

(1) "Contracting State" means the United States of America or Spain;

(2) "Territory" means,
as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and,
as regards Spain, the Spanish national territory;

(3) "National" means,
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and,
as regards Spain, a national of Spain as defined in Title I of Book 1 of the Spanish Civil Code;

(4) "Laws" means the laws and regulations specified in Article 2 which are in force in the territory of either Contracting State;

(5) "Competent Authority" means,
as regards the United States, the Secretary of Health and Human Services, and,
as regards Spain, the Ministry of Labor and Social Security;

(6) "Agency" means,
as regards the United States, the Social Security Administration, and,
as regards Spain, the agency or authority responsible for applying the laws specified in Article 2, paragraph 1, subparagraph A;

(7) "Liaison Agency" means,
as regards the United States, the Social Security Administration, and,
as regards Spain, the agency in charge of coordinating the organizations involved in the application of this Agreement;

(8) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(9) "Benefit" means any cash amount payable under the laws specified in Article 2.

2. Any other expression or term used in both this Agreement and the laws of a Contracting State shall, for that Contracting State, have the same meaning as under those laws.

Article 2

1. The present Agreement shall apply:

A. As regards Spain,

(1) to the legal provisions of the General System of Social Security as they relate to:

(a) Provisional or permanent disability due to ordinary illness or nonwork-related injury.

(b) Old age.

(c) Death and Survivorship due to ordinary illness or nonwork-related injury.

(2) to the legal provisions of the following Special Systems with respect to the contingencies referred to in subparagraph A, clause (1):

(a) Agricultural Workers.

(b) Maritime Workers.

(c) Coal Miners.

(d) Railroad Workers.

(e) Domestic Employees.

(f) Self-employed Persons.

(g) Commercial Representatives.

(h) Students.
(i) Artists.
(j) Authors.
(k) Bullfighters.
(l) Professional Soccer Players.

B. As regards the United States of America,
to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(1) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections.

(2) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.

2. This Agreement shall apply also to future laws which supplement or amend the laws specified in the preceding paragraph.

Article 3

1. Unless otherwise provided, this Agreement shall apply to:

(a) Persons who are or have been subject to the laws of one or both of the Contracting States.

(b) Other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

2. A person who is or has been subject to the laws of a Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with the nationals of the other Contracting State in the application of laws specified in Article 2 of the other Contracting State regarding entitlement to and payment of benefits.

3. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

PART II

Provisions on Coverage

Article 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. A person who would otherwise be covered under the laws of both Contracting States with respect to self-employment shall be subject to the laws of only the Contracting State of which he is a resident.

Article 5

1. Where a person who is covered under the laws of one Contracting State in respect of work performed for a firm in the territory of that Contracting State is sent by that firm to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State as if he were employed in its territory, provided that the period of work in the territory of the other Contracting State is not expected to exceed five years. If the period of work is prolonged due to unforeseen circumstances for more than five years, the laws of the first Contracting State shall continue to apply for a new period of not more than one year, provided that the Competent Authority of the other Contracting State has given its consent. This extension must be requested before the termination of the initial period of five years.

2. Traveling employees of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the firm has its home office. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

3. A person employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State

whose flag the vessel flies. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 6

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first State. For the purposes of this paragraph, employment by the United States Governm[illegible] includes employment by an instrumentality thereof.

Article 7

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of Articles 4, 5 and 6 with respect to any person or category of persons.

Article 8

In determining eligibility for voluntary or optional coverage in accordance with Spanish laws, periods of coverage completed by a person under United States laws shall be considered as periods of coverage completed under Spanish laws if the person fulfills the other requirements provided in Spanish laws.

PART III

Special Provisions on Benefits

Chapter I

Application of Spanish Laws

Article 9

Where a worker has been subject to the laws of both Contracting States, benefits shall be granted under the following conditions:

1. If the person satisfies the conditions required by Spanish laws for a right to benefits, the Spanish agency shall determine the amount of the benefit according to the laws which it applies taking into account only the periods of coverage completed under its laws.

2. If the person does not satisfy the period-of-coverage requirements under Spanish laws, the benefits which he may claim shall be paid according to the following rules:

(a) The periods of coverage completed under each of the laws of the two Contracting States, as well as the periods recognized as equivalent, shall be totalized, provided they do not coincide, both for the determination of the right to benefits as well as for the maintenance or recovery of this right.

(b) Taking into account the totalization of periods as described above, the Spanish agency shall determine, in accordance with its own laws, if the person meets the requirements for a benefit.

(c) If a right to a benefit is acquired, the amount shall be determined as if all the periods of coverage, totalized according to the rules established in subparagraph (a), had been completed exclusively under its own laws (theoretical pension). When the amount of the theoretical pension thus determined is less than the minimum pension provided at that time under Spanish laws, such minimum shall be considered as the theoretical pension.

(d) The amount of the benefit actually due the person shall be established by reducing the amount determined in subparagraph (c) based on the ratio of the periods of coverage completed under Spanish laws to the total of the periods totalized according to subparagraph (a) (pro rata pension).

3. Periods of coverage shall be totalized under this Article according to the following rules:

(a) A quarter of coverage under United States laws shall equal 91 days of contributions under Spanish laws.

(b) The periods of coverage resulting from the preceding conversion shall not be totalized under Spanish laws to the extent they coincide with periods of contributions under Spanish laws.

Article 10

1. For purposes of the application, where appropriate, of the principle of totalization, if the total duration of the periods of coverage acquired under Spanish laws is less than 1 year, and if, taking into account only those periods, no right to benefits is derived under such laws, the Spanish agency shall not grant benefits based on such periods.

2. The provisions of paragraph 1 shall not apply if a right to benefits under Spanish laws may be acquired by totalizing periods of coverage of less than 1 year in both Contracting States.

3. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 11

1. If Spanish laws establish as a condition for the award of certain benefits that periods of coverage be completed in a profession subject to a special system or in a specific profession or occupation, the periods completed under the laws of the other Contracting State shall not be taken into account for the awarding of these benefits unless those periods were completed under a corresponding system or, failing that, in the same profession or occupation.

2. If, taking into account the periods thus completed, the interested person does not meet the required conditions for entitlement to these benefits, these periods shall be taken into account for the awarding of benefits under the general system.

Article 12

1. Benefits awarded in accordance with this Chapter shall be revalued with the same frequency and in the same amount as provided in Spanish internal laws.

2. Pro rata pensions referred to in Article 9, paragraph 2(d), shall be converted by reducing the amount of the revaluation according to the same rule of proportionality cited in that Article.

Article 13

In order to determine the extent of a worker's disability, the Spanish agency shall take into account medical reports and administrative data forwarded by the agency of the other Contracting State. Nevertheless, that agency shall have the right to arrange for the worker to be examined by a physician of its choice.

Article 14

1. To obtain a benefit in the cases set forth in Article 9, paragraph 2, the requirement of Spanish laws that a person be in a situation deemed equivalent to registered (situacion asimilada al alta) shall be considered to have been met if the person concerned is covered under United States laws or is in receipt of a benefit in accordance with United States laws.

2. For purposes of paragraph 1, a person shall be considered to be covered under United States laws if the person is insured for a benefit under such laws or has credit for at least 1 quarter of coverage under such laws during a period of 12 calendar quarters ending with the calendar quarter in which the insured event occurs according to Spanish laws.

Article 15

1. In calculating the benefit computation base, the Spanish agency shall apply its own laws.

2. When all or part of the contributory period elected by the applicant for the calculation of his benefit computation base has been completed under United States laws, the Spanish agency shall determine the aforementioned computation base by reference to the minimum contribution base in force in Spain during that period or fraction thereof, for workers of the same occupational or professional category to which the person concerned belonged while in Spain.

Article 16

The lump-sum death benefit provided by Spanish laws shall be granted solely on the basis of those laws and in conformity with the requirements and conditions of those laws.

Chapter II

Application of United States Laws

Article 17

1. Where a person has sufficient quarters of coverage under United States laws to satisfy the requirements for entitlement to benefits, the agency of the United States shall determine the amount of the benefit according to the laws which it applies taking into account only the quarters of coverage completed under its laws.

2. Where a person does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, including a lump-sum death benefit, but has completed at least six quarters of coverage under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Chapter, periods of coverage which are credited under Spanish laws and which do not coincide with periods of coverage already credited under United States laws.

3. In determining eligibility for benefits under paragraph 2 of this Article, the agency of the United States shall credit one quarter of coverage in each calendar year for every 91 days of contributions in that calendar year certified by the agency of Spain. If the conversion provided in the preceding sentence produces a remainder, that remainder shall be treated as one additional quarter of coverage. However, no quarter of coverage shall be credited under this paragraph for any calendar quarter already credited as a quarter of coverage under United States laws, nor shall the total number of quarters of coverage to be credited for a year exceed four.

4. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 18

Entitlement to a benefit under United States laws which results from Article 17, paragraph 2, shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that paragraph.

Article 19

Where entitlement to a benefit under United States laws is established according to the provisions of Article 17, paragraph 2, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:

I. The person's average earnings credited exclusively under United States laws.

II. The ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

PART IV

Miscellaneous Provisions

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an Administrative Arrangement.

Article 21

The Competent Authorities of the two Contracting States, shall:

(a) Establish Administrative Arrangements for the application of the present Agreement.

(b) Determine their respective liaison agencies whose functions shall be established in the Administrative Arrangement.

(c) Communicate to one another the measures adopted for the application of this Agreement.

(d) Notify one another of laws and regulations which modify those listed in Article 2.

Article 22

1. Disagreements between the Competent Authorities of the two Contracting States regarding the interpretation or application of this Agreement and its Administrative Arrangements shall, as far as possible, be settled by the Competent Authorities.

2. If such a disagreement cannot be resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

Article 23

1. Correspondence between the Competent Authorities, agencies, liaison agencies and individuals, as well as applications or documents, may be in English or Spanish.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular or other authorities.

Article 24

1. Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to an agency of that Contracting State, but which is instead submitted within the same period to the agency of the other Contracting State, shall be considered to have been submitted on time. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

2. Any claim for benefits presented in accordance with the laws of one Contracting State shall be considered as a claim for the corresponding benefits under the laws of the other State, in conformance with conditions and limitations established in an Administrative Arrangement.

Article 25

The benefit of exemptions from or reduction of taxes, stamps, notarial or registration fees or other similar charges provided in the laws of one of the Contracting States for certifications and documents which are required in application of the laws of that State, shall be extended to documents and certifications issued in application of the laws of the other State or of this Agreement.

Article 26

1. Payments due in accordance with this Agreement may be validly made in the currency of the Contracting State whose agency is making the payment.

2. In case provisions restricting the transfer of currency are promulgated in either of the Contracting States, the two States shall immediately adopt measures necessary to guarantee the rights derived from this Agreement.

PART V

Transitional and Final Provisions

Article 27

1. In the application of this Agreement, consideration shall be given to periods of coverage under the laws of either Contracting State which occurred prior to the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods of coverage

which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

2. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force. This Agreement shall not apply to rights settled by a lump-sum payment.

3. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

4. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force. Benefit rights which interested persons may have acquired prior to the entry into force of this Agreement may be reviewed upon application.

Article 28

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 29

This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 30

The Government of each of the Contracting States shall notify the other of the fulfillment of its statutory or constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the exchange of notifications.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

Reginald Bartholomew

For the Government of Spain:

Francisco Fernandez Ordonez

ADMINISTRATIVE ARRANGEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

Pursuant to the provisons of Article 21(a) of the Agreement between the United States of America and Spain on Social Security, signed September 30, 1986, hereinafter referred to as the "Agreement", the Competent Authorities of both Contracting States have agreed on the following:

Chapter I

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 21(b) of the Agreement shall be the following:

(a) For Spain: the National Social Security Institute.

(b) For the United States of America: the Social Security Administration.

2. The liaison agencies designated in the preceding paragraph shall agree on joint procedures, forms and other documents necessary for the application of the Agreement and this Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State, upon request of the employer, employee or self-employed person, shall issue a certificate stating that the employee or self-employed person is covered by those laws. This certificate shall be proof that the named worker is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

(a) In Spain: by the National Social Security Institute.

(b) In the United States of America: by the Social Security Administration.

3. The agency of a Contracting State which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

4. Where the detachment referred to in Article 5, paragraph 1, of the Agreement is extended for unforeseen reasons beyond 5 years, the employer, with the consent of the employee, may apply to the Competent Authority of the Contracting State from which the employee was sent for special authorization to continue coverage of the employee under the laws of that Contracting State. Upon approval, that Competent Authority shall transmit the application for the extension to the Competent Authority of the other Contracting State for its approval, as provided for in the aforementioned Article.

Chapter III

Special Provisions on Benefits

Article 4

1. An application for benefits presented in accordance with the laws of one Contracting State shall be considered as an application for the corresponding benefits under the laws of the other Contracting State in accordance with Article 24, paragraph 2, of the Agreement, if the applicant presents the application in writing and either requests that it be considered an application under the laws of the other Contracting State or, if the applicant has not specifically restricted the application to benefits under the laws of the first State, provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. The provisions of the Agreement shall apply to an application for benefits only if the application is filed on or after the date the Agreement enters into force.

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 4 of this Administrative Arrangement shall inform the liaison agency of the other Contracting State of this fact without delay and provide such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

2. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the worker, the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

3. In the case of an application for disability benefits, the agency shall transmit all available medical evidence concerning the disability.

4. The agency of either of the Contracting States which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

Chapter IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a manner to be agreed upon.

Article 8

1. When, in the judgment of an agency, medical evidence is necessary to determine or review under its laws the disability of an applicant, that agency may request a new medical examination, using a form to be established for such purpose.
2. The costs incurred for the medical examination provided for in the preceding paragraph shall be reimbursed by the agency that requests the examination.

Article 9

The agency of each Contracting State shall pay benefits due to beneficiaries under the Agreement without recourse to the agency of the other Contracting State.

Article 10

Unless otherwise authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Arrangement shall enter into force on the same date as the Agreement and shall have the same period of validity.

DONE at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of the United States of America:

Reginald Bartholomew

For the Government of Spain:

Manuel Chavez Gonzales

TOTALIZATION AGREEMENT BETWEEN THE UNITED STATES AND SWITZERLAND[1]

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 9830

* * * * * * *

Agreement signed at Washington July 18, 1979;
Entered into force November 1, 1980.
With final protocol.
And administrative agreement
Signed at Bern December 20, 1979;
Entered into force November 1, 1980.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

The President of the United States of America and the Swiss Federal Council,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed to conclude an Agreement for that purpose and have therefore appointed as their plenipotentiaries:

For the President of the United States of America: Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare.

For the Swiss Federal Council: Raymond Probst, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation to the United States of America who, having exchanged their full powers, found to be in good and due form, have agreed to the following provisions:

PART I

Definitions and Laws

ARTICLE 1

For the purposes of this Agreement:

1. "Territory" means, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and as regards Switzerland, the territory of the Swiss Confederation;

2. "National" means, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and as regards Switzerland, a person of Swiss nationality;

3. "Laws" means the laws and regulations specified in Article 2;

4. "Competent Authority" means, as regards the United States, the Secretary of Health, Education, and Welfare, and as regards Switzerland, the Federal Social Insurance Office;

5. "Agency" means, as regards the United States, the Social Security Administration, and as regards Switzerland, a compensation fund of the Old-Age and Survivors Insurance and the other bodies responsible for the administration of Disability Insurance;

6. "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

7. "Benefits" ("Prestations") means any benefit in cash or in kind as provided for in the laws of either Contracting State;

8. "Family member" means a person eligible for benefits based on the periods of coverage of a living person as established under the laws of each of the Contracting States;

9. "Survivor" means a person eligible for benefits based on the periods of coverage of a deceased person as established under the laws of each of the Contracting States;

10. "Stateless person" means a person defined as a stateless person in Article 1 of the Convention Relating to the Status of Stateless Persons dated September 28, 1954; and

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[1]This text is a copy of a Department of State publication. TIAS 9830 is the finding aid comparable to a citation to the United States Code. Regulations of the Secretary of Health and Human Services relating to totalization agreements are contained in Part 404, Subpart T, Chapter III, title 20, Code of Federal Regulations.

11. "Refugee" means a person defined as a refugee in Article 1 of the Convention Relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967.

ARTICLE 2

1. For the purpose of this Agreement, the applicable laws are:
a. As regards Switzerland, the Federal laws governing—
—Old-Age and Survivors Insurance,
—Disability Insurance;
b. As regards the United States, the laws governing the Federal Old-Age, Survivors, and Disability Insurance Program:
—Title II of the Social Security Act and regulations promulgated under the authority provided in the Social Security Act, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
—Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.
2. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements concluded between one Contracting State and a third State or laws or regulations promulgated for their specific implementation.

PART II

General Provisions

ARTICLE 3

Unless otherwise provided, this Agreement shall apply to:
(*a*) nationals of either Contracting State,
(*b*) refugees who reside in either Contracting State,
(*c*) stateless persons who reside in either Contracting State,
(*d*) other persons, including family members and survivors, with respect to the rights they derive from persons in categories (a), (b) and (c).

ARTICLE 4

Unless otherwise provided in this Agreement or the Final Protocol, nationals of one Contracting State shall, in the application of the laws of the other Contracting State, receive equal treatment with the nationals of the other Contracting State.

ARTICLE 5

The Agreement shall not prevent the application of provisions of the laws of either Contracting State concerning benefits that are more favorable to the persons listed in Article 3.

PART III

Provisions on Coverage

ARTICLE 6

1. Unless otherwise provided in Part III of this Agreement or the Final Protocol, a person of any nationality[2] who is employed in the territory of either Contracting State shall be subject, with respect to employment in that territory, to the laws on compulsory coverage of the Contracting State where the person is employed, and, in determining the amount of contributions payable under the laws of that Contracting State, no account shall be taken of any income the person may receive from employment in the territory of the other Contracting State.
2. Where a person of any nationality is in the service of an employer having a place of business in the territory of a Contracting State and is sent by that employer to the territory of the other Contracting State for a period not expected to exceed 5 years, the person shall be subject to the laws on compulsory coverage of only the first

[2]Supplementary Agreement dated June 1, 1988, struck out "national of either Contracting State" and substituted "person of any nationality".

Contracting State as if he were employed in its territory. If, before the end of 5 years, the employer who requested an exemption for a person on temporary assignment requests an extension of the period of exemption, this extension may be granted by way of exception if the Competent Authority of the State from whose territory the person was sent considers the request to be justified and, based on this fact, presents the application for extension to the Competent Authority of the other Contracting State and obtains the consent of the latter State. The spouse and children who accompany a person who is sent temporarily in conformity with the preceding two sentences of this paragraph shall remain subject to the laws on compulsory coverage of only the State from whose territory the worker was sent for any period during which they are not employed or self-employed in the territory of the other State.[3]

3. A person of any nationality[4] who is self-employed in the territory of either Contracting State and who is a resident of one Contracting State shall be subject to the laws on compulsory coverage of only the Contracting State in whose territory he resides.

ARTICLE 7

1. Part III of this Agreement shall not apply to the categories of persons listed in the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, and of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States not listed in the provisions of the Vienna Conventions mentioned in paragraph 1, employed by that Contracting State in the territory of the other Contracting State, shall be subject to the laws on compulsory coverage of only the first Contracting State.

ARTICLE 8

The Competent Authority of one Contracting State may grant an exception to the provisions of Part III of this Agreement if the Competent Authority of the other Contracting State agrees, provided that the affected[5] person will be subject to the laws on compulsory coverage of one of the Contracting States.

PART IV

Provisions on Benefits

CHAPTER 1

Application of Swiss Laws

ARTICLE 9

A contribution period of at least one year shall be required for entitlement to Swiss ordinary Old-Age, Survivors and Disability Insurance Pensions intended for United States nationals.

ARTICLE 10

1. United States nationals may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have, immediately prior to eligibility for such measures, paid contributions under Swiss laws for at least one year.

2. Spouses and widows of United States nationality not gainfully employed, as well as children under age of the same nationality, may claim rehabilitation measures of the Swiss Disability Insurance as long as they maintain their domicile in Switzerland and provided they have resided in Switzerland without interruption for at least one year immediately prior to eligibility for such measures. Children under age of the same nationality may, moreover, claim such measures if they are domiciled in Switzerland and have been born invalids in Switzerland or have resided in Switzerland without interruption since birth.

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[3] Supplementary Agreement dated June 1, 1988, amended paragraph 2 in its entirety.
[4] Supplementary Agreement dated June 1, 1988, struck out "national of either Contracting State" and substituted "person of any nationality".
[5] Supplementary Agreement dated June 1, 1988, struck out "employed or self-employed".

ARTICLE 11

1. Where the right to an ordinary pension under Swiss laws depends on a current affiliation with Swiss Old-Age, Survivors and Disability Insurance, a United States national shall satisfy such requirement if, on the date the insured event occurs according to Swiss laws, the United States national has a record of current coverage under United States laws.

2. Ordinary pensions for insured persons with a disability inferior to 50 percent shall be paid to United States nationals only as long as they maintain their domicile in Switzerland.

ARTICLE 12

United States nationals shall only be entitled to extraordinary pensions under Swiss laws if they (1) maintain their domicile in Switzerland and (2) show proof that immediately prior to the month in which they apply for pensions they have resided in Switzerland without interruption for

(*a*) at least ten full years if applying for an old-age pension, or

(*b*) at least five full years if applying for a disability or survivors pension, or for an old-age pension which would replace a disability or survivors pension.

CHAPTER 2

Application of United States Laws

ARTICLE 13

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, periods of coverage completed under Swiss laws shall be taken into account to the extent they do not coincide with calendar quarters already credited as quarters of coverage under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the agency of the United States shall credit one quarter of coverage for every three months of coverage certified as creditable by the agency of Switzerland to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.[6]

4.[7]

5. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to a higher benefit without the need to invoke the provision of paragraph 1.

PART V

Miscellaneous Provisions

ARTICLE 14

The Competent Authorities of the two Contracting States shall:

(*a*) Make all necessary administrative arrangements for the application of this Agreement;

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[6] Supplementary Agreement dated June 1, 1988, amended paragraph 3 in its entirety.
[7] Supplementary Agreement dated June 1, 1988, deleted paragraph 4.

(*b*) Define the procedures for reciprocal administrative assistance, including the allocation of expenses associated with obtaining medical, administrative, and other evidence required for the application of this Agreement;

(*c*) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(*d*) Communicate to each other, as soon as possible, information concerning all changes in their respective laws.

ARTICLE 15

1. The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge subject to exceptions to be agreed upon in an administrative agreement.

2. Liaison agencies for the implementation of this Agreement shall be:

(*a*) for the United States, the Social Security Administration; and

(*b*) for Switzerland, the Swiss Compensation Office.

ARTICLE 16

Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or an agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the Competent Authority or an agency of the other Contracting State in accordance with its laws.

ARTICLE 17

1. The Competent Authorities and agencies of the Contracting States may correspond directly with each other and with any person wherever he may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

2. An application or document may not be rejected because it is in an official language of the other Contracting State.

3. The notices of decisions of an agency or a tribunal which under the laws of a Contracting State require personal delivery may be transmitted directly by registered letter to a person in the territory of the other Contracting State.

ARTICLE 18

1. A written application for benefits filed with an agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant (*a*) requests that it be considered an application under the laws of the other Contracting State or (*b*) in the absence of a request that it not be so considered, provides information indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. An applicant may request that an application submitted to an agency of one Contracting State be effective on a different date in the other Contracting State within the limitations of and in conformity with the laws of the other Contracting State.

3. The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.

ARTICLE 19

1. A written appeal of a determination made by an agency of one Contracting State may be validly filed with an agency of the other Contracting State.

2. Any claim, notice or appeal which must be filed within a given period of time with an agency of one Contracting State shall be considered to have been timely filed if the claim, notice or appeal has been filed within such period with a corresponding agency of the other Contracting State. In such case, the agency with which the claim, notice or appeal has been filed shall indicate the date of receipt of the document on this document and transmit it without delay to the liaison agency of the other Contracting State.

ARTICLE 20

1. The amount of any benefit due in accordance with the provisions of this Agreement shall be paid in the currency of the Contracting State whose agency is responsible for such benefit.

2. In case provisions designed to restrict the exchange of currencies are issued in either Contracting State, the Governments of the two Contracting States shall decide on the measures necessary to assure the transfer of sums owed by either Contracting State under this Agreement.

ARTICLE 21

Any disagreement between the Contracting States concerning the interpretation or implementation of this Agreement which has not been settled within six months shall, at the request of either Contracting State, be submitted to an arbitral tribunal of three members. Each Contracting State shall appoint one member. These two members shall select the presiding member. Should the members disagree on the nomination of the presiding member, the presiding member will be appointed by the President of the International Court of Justice. The arbitral tribunal shall establish its own procedure. The decision of the arbitral tribunal shall be binding on the Contracting States.

PART VI

Transitional and Final Provisions

ARTICLE 22

1. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

2. This Agreement shall not establish any claim to payment of a benefit for any periods before its entry into force or a lump-sum death benefit if the person died before its entry into force.

3. Consideration shall be given to any period of coverage and any period of residence under the laws of either Contracting State occurring before the entry into force of this Agreement, in order to determine the right to benefits under this Agreement.

4. This Agreement shall not apply to rights settled by a lump-sum payment or refund of contributions.

5. Determinations made before the entry into force of this Agreement shall not affect rights arising under it.

6. This Agreement shall not result in the reduction of cash benefit amounts because of its entry into force.

ARTICLE 23

The attached Final Protocol shall form an integral part of this Agreement.

ARTICLE 24

The Agreement embodied in the exchange of notes between the Swiss Federal Political Department and the Ambassador of the United States of America in Bern of June 27, 1968, concerning the reciprocal payment of certain old-age, survivors and disability benefits is terminated effective with the date of entry into force of the present Agreement.

ARTICLE 25

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

ARTICLE 26

This Agreement shall enter into force on the first day of the second month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

IN WITNESS WHEREOF, the plenipotentiaries of the Contracting States being duly authorized thereto, have signed the present Agreement.

DONE at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

JOSEPH A. CALIFANO, JR.

FOR THE SWISS FEDERAL COUNCIL:

RAYMOND PROBST

FINAL PROTOCOL TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

At the time of signing the Agreement between the United States of America and the Swiss Confederation on Social Security, the undersigned plenipotentiaries stated that they are in agreement on the following points:

1. With respect to Article 4, persons designated in Article 3(b) (c) or (d) who reside in the territory of Switzerland shall receive benefits provided by the laws of the United States under the same conditions as United States nationals who reside in Switzerland.

2. Article 4 shall not apply to provisions of Swiss laws on (a) voluntary Old-Age, Survivors and Disability Insurance of Swiss nationals residing abroad; (b) Old-Age, Survivors and Disability Insurance of Swiss nationals working abroad on account of an employer in Switzerland; (c) welfare benefits ("allocations de secours") granted to Swiss nationals residing abroad; or (d) helplessness allowances ("allocations pour impotents").

3.[8]

4.[9]

5. Article 6.2 shall apply in cases where a person is employed in the territory of a third State, but compulsorily covered under the laws of one of the Contracting States, and is then sent by his employer to the territory of the other Contracting State.

5A. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be treated according to the provisions of Article 6.3 if the person is a resident of the first Contracting State and according to the provisions of Article 6.1 and 6.2 in any other case.[10]

6. With respect to Article 10.2, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding two months within a period of one year.

7. With respect to Article 11.1, a United States national shall be considered to have a record of current coverage under United States laws if he is entitled to a benefit under such laws or has credit for at least four quarters of coverage under such laws during a period of eight calendar quarters ending with the calendar quarter (a) in which the insured event occurs according to Swiss laws or (b) immediately preceding the calendar quarter in which the insured event occurs according to Swiss laws.

8. Article 11.1 notwithstanding, United States nationals with a disability inferior to 66 2/3 percent may claim an ordinary pension of the Swiss Disability Insurance only as long as they are currently affiliated with Swiss Old-Age, Survivors and Disability Insurance a the date the insured event occurs.

9. United States nationals not domiciled in Switzerland who have to give up their gainful activity in Switzerland because of an injury or disease and who stay in Switzerland until the insured event occurs, are considered as being currently affiliated with Swiss laws and may claim benefits of the Disability Insurance. They shall have to pay contributions to Old-Age, Survivors and Disability Insurance as if they were domiciled in Switzerland.

10. With respect to Article 12, the duration of residence of a United States national in Switzerland shall be considered as uninterrupted by a sojourn outside the territory of Switzerland for a period not exceeding three months within a calendar year. However, a period of residence in Switzerland during which a United States national has been exempt from coverage under Swiss laws shall not be considered in determining if the period of residence required under Article 12 has been completed.

11. The refund of contributions paid under Swiss laws, carried out in accordance with Swiss laws on the refund of contributions to foreigners and stateless persons, shall not bar the payment of extraordinary pensions in accordance with Article 12;

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[8] Supplementary Agreement dated June 1, 1988, deleted paragraphs 3 and 4.
[9] See footnote 8.
[10] Supplementary Agreement dated June 1, 1988, added paragraph 5A.

provided, however, that contributions refunded shall be charged against benefits to be paid.

12. With respect to Article 13, in accordance with section 233(c)(3) of the United States Social Security Act, the Agreement shall not apply to entitlement to hospital insurance benefits provided under sections 226 and 226A of that Act.

13. Article 13 shall also apply to nationals of a State other than a Contracting State who are not included among the persons referred to in Article 3(d).

14. With respect to Switzerland, appeals which must be filed within a given period of time with a tribunal in Switzerland shall be considered to have been timely filed if it is shown that the appeal has been filed within such period with the agency or a court in the United States.

DONE at Washington on July 18, 1979, in duplicate, in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE SWISS FEDERAL COUNCIL:
JOSEPH A. CALIFANO, JR.	RAYMOND PROBST

ADMINISTRATIVE AGREEMENT FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY OF JULY 18, 1979

In conformity with Article 14(a) of the agreement on Social Security concluded on July 18, 1979 between the United States of America, and Switzerland, herein after referred to as "the Agreement", the following provisions have been agreed upon:

Chapter 1

General Provisions

Article 1

Terms used in this Administrative Agreement shall have the same meaning as in the Agreement.

Article 2

The Swiss Competent Authority or, with its consent, the Swiss liaison agency, and the United States liaison agency shall agree upon joint administrative measures and forms necessary for the implementation of the Agreement and this Administrative Agreement.

Chapter 2

Provisions Concerning the Applicable Laws

Article 3

1. In cases where Article 6.2 of the Agreement applies, the agency of the Contracting State whose laws are applicable shall issue upon request of the employer a certificate stating that the concerned employee remains subject to these laws. The certificate shall be proof that the employee is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued:

In the United States: By the Social Security Administration.

In Switzerland: By the competent compensation fund of the Old-Age and Survivors Insurance.

3. Requests for an extension of the period of detachment shall be submitted to the Competent Authority or, with its authorization, to the liaison agency of the Contracting State from whose territory the employee is sent. The Competent Authorities shall communicate their decisions to the appropriate agencies of their respective countries.[11]

[11]Supplementary Administrative Agreement dated June 1, 1988, amended paragraph 3 in its entirety.

Chapter 3

Provisions Concerning Benefits

Article 4

1. In cases where Article 18 of the Agreement applies the liaison agency of the Contracting State which has received an application for benefits under its laws shall inform the liaison agency of the other Contracting State of this fact without delay, using forms established for this purpose. It shall also transmit documents and such other available information as may be necessary for the agency of the other Contracting State to establish the right of the applicant to benefits according to the provisions of Part IV of the Agreement. In the case of an application for disability benefits it shall, in particular, transmit all relevant medical evidence in its possession concerning the disability of the applicant.

2. The liaison agency of a Contracting State which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim.

3. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

Article 5

In the application of Article 13 of the Agreement, the Swiss liaison agency shall notify the United States liaison agency of the months in which a person completed periods of coverage under Swiss laws. A record of the total number of months of coverage in specific calendar years shall be provided where the actual months of coverage are not known.[12]

Chapter 4

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon pursuant to Article 2 of this Administrative Agreement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement or the laws specified in Article 21 of the Agreement.

Article 7

Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 8

The liaison agencies of the two Contracting States shall exchange statistics on the payments made to beneficiaries under the Agreement for each calendar year in a form to be agreed upon. The data shall include the number of beneficiaries and the total amount of benefits, by type of benefit.

Article 9

1. Where administrative assistance is requested under Article 15 of the Agreement, expenses other than regular personnel and operating costs of the Competent Authorities and agencies providing the assistance shall be reimbursed.

2. Where the agency of a Contracting State requires that a claimant or beneficiary submit to a medical examination, such examination, if requested by that agency, shall be arranged by the agency of the other Contracting State in which the claimant or

[12]Supplementary Administrative Agreement dated June 1, 1988, amended Article 5 in its entirety.

beneficiary resides, in accordance with the rules of the agency making the arrangements and at the expense of the agency which requests the examination.

3. Upon request, the agency of either Contracting State shall furnish without expense to the liaison agency of the other Contracting State any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

4. Amounts owed under paragraphs 1 and 2 shall be reimbursed upon presentation of a detailed statement of expenses.

Article 10

Unless authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

This Administrative Agreement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

Done, at Bern on December 20th, 1979, in duplicate in the English and French languages, both texts being equally authentic.

For the Government of the United States of America:

RICHARD D. VINE

For the Swiss Federal Social Insurance Office:

ALBERT GRANACHER

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